

United States v. Rafiekian

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

-----x
:
UNITED STATES OF AMERICA, : Criminal Action No.
:
versus : 1:18-CR-457
:
BIJAN RAFIEKIAN,, : Day 2 (PM Session)
:
Defendant. : July 16, 2019
-----x

The above-entitled Jury trial was heard by the
Honorable Anthony J. Trenga, United States District Judge.

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EASTERN DISTRICT OF VIRGINIA

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P R O C E E D I N G S

A F T E R N O O N S E S S I O N

(Court proceedings resumed at 2:12 p.m.)

THE COURT: Are you ready to proceed?

MS. MITCHELL: I am, Your Honor.

THE COURT: All right. Bring the jury out.

(Jeffrey Gilday resumes the stand.)

(Jury present.)

THE COURT: All right. Please be seated.

Mr. Gilday, you remain under oath.

Ms. Mitchell.

MS. MITCHELL: Thank you, Your Honor.

Your Honor, I believe when we adjourned I had just offered Defendant's Exhibit 69, 72, 73, 76, 78, 81, and 82, which the witness identified as the Amsterdam filings. We're now again --

THE COURT: All right. Any objection?

MR. TURGEON: No.

THE COURT: All right. Without objection, Defense Exhibit 69, 72, 73, 76, 78, 81 and 82 are admitted.

MS. MITCHELL: Now turning your attention, if I could, to Defendant's Exhibit 86, please.

CROSS-EXAMINATION

(Cont'd)

BY MS. MITCHELL:

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J. Gilday - Cross

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1 Q. Mr. Gilday, that's the report we spoke about earlier, the
2 annual report of the attorney general to the Congress of the
3 United States on the administration of Foreign Agents
4 Registration Act; is that correct?

5 A. Yes, ma'am.

6 Q. And that's for the six months ending December 31, 2016,
7 correct?

8 A. Yes, ma'am.

9 Q. I want to direct your attention to page 211 of the
10 document, not of the Bates number.

11 And that's where registrations applicable to the
12 government of Turkey start, correct?

13 A. Yes, ma'am.

14 Q. And there are actually 17 different registrations on
15 behalf of the government of Turkey; is that correct?

16 A. Yes, ma'am.

17 Q. All right. So the government of Turkey clearly knows --
18 has registered openly with respect to its use of consultants
19 in the United States?

20 A. Yes.

21 Q. Thank you.

22 Now, I want to turn your attention back to
23 Exhibit 60, if I could.

24 You had an opportunity to look at this before,
25 briefly, correct?

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1 A. Yes.

2 Q. It's a letter from the law firm of Covington to Heather
3 Hunt, correct?

4 A. Correct.

5 MS. MITCHELL: And I would ask that this be
6 displayed to the jury and the judge.

7 THE COURT: You may publish it.

8 MS. MITCHELL: Thank you, Your Honor.

9 BY MS. MITCHELL:

10 Q. Heather Hunt, who is she?

11 A. She is the former chief of that FARA Unit.

12 Q. And she was chief at the time in March of 2017?

13 A. Yes, ma'am.

14 Q. All right. Had you been aware of the extensive
15 discussions that had been going on between FIG's lawyers at
16 Covington and Heather Hunt with respect to this filing --

17 A. No.

18 Q. -- in March -- in the early months of 2017?

19 A. I may have remembered them meeting, but I wasn't -- I
20 didn't take part in any of those meetings.

21 Q. So you weren't part of any of those discussions that were
22 ongoing?

23 A. No, ma'am.

24 Q. All right. Directing your attention, if I can, to
25 Exhibit 60, and focus in, if I can, on the second full

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1 paragraph.

2 MS. MITCHELL: And ask that that be highlighted for
3 the jury.

4 THE COURT: All right. You may do that.

5 MS. MITCHELL: Thank you.

6 BY MS. MITCHELL:

7 Q. If you could read that paragraph for us, please.

8 A. Out loud?

9 Q. Please.

10 A. "In September 2016, Flynn Intel Group publicly disclosed
11 its representation of Inovo BV in the Federal Lobbying
12 Disclosure Act registration that was filed with the secretary
13 of the Senate and clerk of the House.

14 "After General Flynn was named in mid-November 2016
15 to serve as national security advisor in the new
16 administration, Flynn Intel Group shut down its operations,
17 did not renew its contract with Inovo BV and filed on
18 December 1st, 2016, a final public disclosure report
19 terminating its lobbyist registration for Inovo BV."

20 Q. Fantastic.

21 MS. MITCHELL: And then if I can highlight, for the
22 jury, paragraph No. 4, Your Honor.

23 THE COURT: Yes.

24 MS. MITCHELL: Thank you.

25 BY MS. MITCHELL:

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1 Q. If I can have you read that out loud as well, I'd
2 appreciate it.

3 A. "The Department's regulations provide that filing under
4 the LDA is not an option. However, if a foreign government,
5 even though not the client nonetheless is the principal
6 beneficiary of the work performed, this is an uncertain
7 standard not based on the statutory language and not defined
8 in the Department's regulations; nevertheless, because of the
9 subject matter Flynn Intel Groups work for Inovo BV, which
10 focused on Mr. --

11 Q. Fethullah Gulen?

12 A. -- Fethullah Gulen, whose extradition is sought by the
13 government of Turkey, the engagement could be construed to
14 have principally benefited the Republic of Turkey. To
15 eliminate any potential doubt, the Flynn Intel Group therefore
16 is electing to file a registration under FARA, in lieu of its
17 prior LDA registration."

18 Q. When you receive a packet complete like this, you look at
19 each page and consider them all as a -- in context to one
20 another, correct?

21 A. Yes, ma'am.

22 MS. MITCHELL: No further questions.

23 THE COURT: All right. Any redirect?

24 MR. TURGEON: Yes, Your Honor.

25 **REDIRECT EXAMINATION**

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J. Gilday - Redirect ~~United States v. Rafiekian~~

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1 BY MR. TURGEON:

2 Q. Could you take a look at Government Exhibit No. 65.

3 Do you recall if that's one of the documents that
4 Ms. Mitchell asked you about on cross-examination.

5 A. I believe this was one of them, yes.

6 Q. So please take a look at the second page of Exhibit 65.

7 First of all, what is Exhibit 65?

8 A. This is a short form registration statement for Bijan
9 Rafiekian.

10 Q. And who is the registrant in -- for that short form
11 registration statement?

12 A. The Flynn Intel Group.

13 Q. Was that document part of the Flynn Intel Group's FARA
14 filing?

15 A. Yes.

16 Q. Take a look at that second page. Who signed that form?

17 A. Bijan Rafiekian.

18 MR. TURGEON: The Court's indulgence for one moment,
19 Your Honor.

20 No further questions.

21 THE COURT: All right. Thank you. May the witness
22 be excused?

23 MR. TURGEON: Yes, sir.

24 THE COURT: Mr. Gilday is excused. Do not discuss
25 your testimony outside of the courtroom with any other

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1 witness.

2 THE WITNESS: All right.

3 THE COURT: Government will call its next witness.

4 MR. TURGEON: Your Honor, the United States calls
5 Robert Kelner.

6 THE COURT: All right.

7 (Witness excused.)

8 THE CSO: Stand right here, face the clerk and raise
9 your right hand.

10 Thereupon,

11 **ROBERT KELNER,**

12 having been called as a witness on behalf of the Government
13 and having been first duly sworn by the Deputy Clerk, was
14 examined and testified as follows:

15 (Witness seated.)

16 **DIRECT EXAMINATION**

17 BY MR. TURGEON:

18 Q. Could you please tell us your name.

19 A. Robert Kelner.

20 Q. How are you employed?

21 A. I'm an attorney at the law firm of Covington & Burling in
22 Washington.

23 Q. How long have you been with Covington & Burling?

24 A. Almost 21 years.

25 Q. What type of law do you practice?

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1 A. I practice what is called political law, as well as white
2 collar criminal defense.

3 Q. Do you have an area of specialty?

4 A. I do. I have several specialties within political law.
5 They include campaign finance law and the Foreign Agents
6 Registration Act, FARA.

7 Q. What is the Foreign Agents Registration Act?

8 A. The Foreign Agents Registration Act is a law that was
9 enacted in 1938 which requires anybody who's acting as an
10 agent of a foreign person, or the language of the statute of a
11 foreign principal, to engage in certain activities in the
12 United States to register themselves with the Department of
13 Justice and to disclose their activities.

14 Q. What is a foreign agent under FARA?

15 A. A foreign agent is an individual or a firm that is
16 requested or directed by a foreign principal, like a foreign
17 government or a foreign corporation, to engage in lobbying
18 activities, or public relations activities, or other political
19 activities in the United States on behalf of that foreign
20 principal.

21 Q. Relevant to this case, whom did Covington & Burling
22 represent?

23 A. Covington represented General Michael Flynn and the Flynn
24 Intel Group, Inc.

25 THE COURT: Mr. Turgeon, let me see counsel at the

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1 bench.

2 MR. TURGEON: Yes, Your Honor.

3 (Bench Conference.)

4 THE COURT: I assume you've met with Mr. Kelner and
5 he's familiar with the Court's ruling?

6 MR. TURGEON: Yes. That's right, Your Honor.

7 THE COURT: Privilege and nonprivilege?

8 MR. TURGEON: Yes.

9 THE COURT: All right. We have Flynn and FIG's
10 lawyer here, who wants to be in a position to state an
11 objection. I was going to have him sit in the well of the
12 court, but off to the side, and let them have an opportunity
13 to serve any objections if and when that happens.

14 Any issue with any of that?

15 MR. TURGEON: Well, Your Honor, we would object
16 to --

17 THE COURT: I'm sorry.

18 MR. TURGEON: We would object to anyone else being
19 present and admit any objections other than the attorneys for
20 the parties on trial.

21 THE COURT: Well, these counsel are for Flynn, you
22 know, counsel for FIG and Flynn, so I'm going to let these
23 lawyers be here.

24 I assume he's familiar with the Court's rulings.
25 We're not going to have any needless objections, but I will

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1 give him an opportunity. He had made that request.

2 All right.

3 MR. TURGEON: Thank you, Your Honor.

4 THE CSO: Sir?

5 THE COURT: Would you let Mr. Binnall -- ask Mr.

6 Binnall to come up here?

7 No, Mr. Binnall.

8 I believe Mr. Warrington is here for FIG.

9 MR. MACDOUGALL: Oh, is that right? I'm trying to
10 figure out who?

11 THE COURT: Good.

12 (Mr. Binnall, Mr. Warrington, and Ms. Powell, joined
13 the side bar conference.)

14 THE COURT: I want to confirm who is here for FIG
15 and who's here for Flynn.

16 MR. WARRINGTON: David Warrington on behalf of Flynn
17 Intel Group.

18 THE COURT: All right.

19 MR. BINNALL: Jesse Binnall, one with -- on behalf
20 of General Flynn.

21 THE COURT: All right. I'm going to let both
22 of you-all to sit in the well of the court. And if there's an
23 issue, I want you to object and raise your hand.

24 Are you familiar with the Court's rulings on
25 privilege issues?

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1 MR. WARRINGTON: Yes, Your Honor.

2 THE COURT: I'm not anticipating we're going to get
3 into an area where it would require any further rulings. I
4 did want to give you the opportunity to --

5 MR. BINNALL: That's our anticipation.

6 THE COURT: -- to make a record, if it's necessary.

7 All right.

8 MR. BINNALL: Thank you, Your Honor.

9 (Open court.)

10 THE COURT: All right. Thank you. Mr. Turgeon.

11 BY MR. TURGEON:

12 Q. Is the Flynn Intern Group also referred to as FIG,
13 spelled F-I-G?

14 A. It is.

15 Q. Who at Covington was the lead attorney for those clients,
16 General Flynn and FIG?

17 A. I was.

18 Q. When did you begin representing General Flynn?

19 A. Some time between Christmas of 2016 and New Year's Day.
20 So the very end of December of 2016.

21 Q. Did you still represent General Flynn and FIG?

22 A. No.

23 Q. When did the representation end?

24 A. To the best of my recollection, June 5, 2019, this year.

25 Q. During the time that your firm, Covington, represented

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1 General Flynn and FIG, did any other lawyers represent them as
2 well?

3 A. They were also represented by another lawyer, not at
4 Covington, named Kristen Verderame.

5 Q. What was Covington hired to do for FIG?

6 A. Covington was hired to help FIG and General Flynn respond
7 to an inquiry letter from the U.S. Department of Justice.

8 Q. So I would like to turn your attention to what's been
9 marked as Government Exhibit No. 90.

10 A. Okay.

11 Q. Have you seen that letter before?

12 A. I have.

13 Q. What is it?

14 A. This is the inquiry letter from the U.S. Department of
15 Justice that I just mentioned.

16 MR. TURGEON: Your Honor, the Government moves to
17 admit Exhibit No. 90.

18 THE COURT: Any objection?

19 MR. MACDOUGALL: No objection, Your Honor.

20 THE COURT: Without objection, Government Exhibit 90
21 is admitted.

22 (Government's Exhibit No. 90
23 admitted into evidence.)

24 BY MR. TURGEON:

25 Q. What components at DOJ sent this letter?

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1 A. It was sent by the Foreign Agents Registration Act unit
2 or FARA unit.

3 Q. What is the FARA unit?

4 A. The FARA unit is the part of the U.S. Department of
5 Justice that administers and enforces the Foreign Agents
6 Registration Act.

7 Q. What is the purpose of an inquiry letter?

8 A. The purpose of an inquiry letter is to ask a person
9 whether they should, in fact, have registered under the
10 Foreign Agents Registration Act prompted by some kind of
11 information that the Department of Justice has available to
12 it.

13 Q. And in broad strokes, what was the subject of this letter
14 from the FARA unit?

15 A. This letter concerned an op-ed article that had been
16 published by General Flynn in a publication called *The Hill* in
17 November of 2016, and it was asking whether or not, because of
18 that op-ed, FIG or General Flynn should have been registered
19 under FARA.

20 Q. What was the subject matter of that op-ed article?

21 A. The op-ed focused on a Turkish exile living in
22 Pennsylvania by the name of Fethullah Gulen.

23 Q. Did FIG work on a project related to Fethullah Gulen in
24 the summer and fall of 2016?

25 A. It did.

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1 Q. Who contracted with FIG for that project?

2 A. The contract was between a dutch company called Inovo and
3 FIG.

4 Q. Who owns Inovo?

5 A. To the best of our understanding, it's owned by a Turkish
6 national named Ekim Alptekin.

7 Q. In general terms, what did Covington do in response to
8 this inquiry letter?

9 A. Covington collected and reviewed documents for FIG,
10 including e-mails. We interviewed several key FIG personnel.
11 We reviewed public source information or public documents, and
12 we reviewed work product generated under the Inovo contract
13 under FIG.

14 Q. Why did you gather that information and review those
15 documents?

16 A. In order to advise FIG and General Flynn on whether they
17 needed to register under the Foreign Agents Registration Act
18 and how to respond to the inquiry letter from the Department
19 of Justice.

20 Q. Did you respond to that inquiry letter?

21 A. We did.

22 Q. How did you respond to the inquiry letter?

23 A. We sent a letter back to the FARA unit, which I believe
24 was dated January 11th, 2017, responding to the questions that
25 had been raised or responding to the inquiry.

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1 Q. So I would like to direct your attention to Government
2 Exhibit 92.

3 A. Okay.

4 Q. Can you identify that document, please?

5 A. This is the response that we sent to the inquiry letter.

6 MR. TURGEON: The Government moves to admit Exhibit
7 No. 92, Your Honor.

8 THE COURT: Any objection?

9 MR. MACDOUGALL: No objection.

10 THE COURT: Without objection, Exhibit 92 is
11 admitted.

12 (Government's Exhibit No. 92
13 admitted into evidence.)

14 BY MR. TURGEON:

15 Q. In response, what did that response letter say?

16 A. In sum it said that it was likely that the Flynn Intel
17 Group was going to need to register under the Foreign Agents
18 Registration Act, that we were continuing to review
19 information, and that we had not yet made a final
20 determination as to who should be listed as the foreign
21 principal on the FARA registration.

22 Q. After you sent that letter, did your fact gathering
23 continue?

24 A. It did.

25 Q. During what time period did Covington's fact gathering

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1 take place?

2 A. The fact gathering continued until the FARA filing was
3 submitted on March 7th of 2017.

4 Q. You mentioned conducting interviews. Who did Covington
5 interview in the course of its fact gathering?

6 A. Prior to March 7th, we interviewed General Flynn, we
7 interviewed Bijan Rafiekian; we interviewed somebody named
8 Mike Boston who was the day-to-day project manager on the
9 Inovo contract for FIG; we interviewed someone named Bob
10 Kelley who was a lawyer for FIG. There may have been other
11 interviews, but those are the ones I recall at this moment.

12 Q. Do you see Bijan Rafiekian in the courtroom today?

13 A. I do.

14 Q. Can you please identify him by something he's wearing?

15 A. He's the gentleman in the navy blue suit at this table
16 right here.

17 MR. TURGEON: Your Honor, for the record, reflect
18 that the witness has identified --

19 THE COURT: The record will reflect that Mr. Kelner
20 has identified Mr. Rafiekian.

21 BY MR. TURGEON:

22 Q. You mentioned collecting documents. What sort of
23 documents did you collect?

24 A. To the best of my recollection, the documents that were
25 collected included e-mails from FIG's e-mail accounts, or some

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1 of FIG's e-mail accounts. We collected some of the work
2 product that had been generated by FIG under its contract with
3 Inovo. We collected accounting records from the Flynn Intel
4 Group. There may well have been other documents but those are
5 some of the things I recall right now.

6 Q. Did you collect any contracts?

7 A. We did. We collected contracts.

8 Q. And you mentioned that you collected some FIG e-mails.
9 Were you able to collect all FIG e-mails?

10 A. No.

11 Q. Why not?

12 A. The main reason is that FIG had begun to shut down its
13 operations in November of 2016. And by the time we were
14 retained, it was -- it was shut down, and some of the e-mail
15 accounts either no long existed or we were no longer able to
16 gain access to them.

17 In addition, FIG had used encrypted e-mail accounts
18 using a specialized encryption software. I'm not certain, as
19 I sit here today, whether we were able to recover all of the
20 encrypted e-mails.

21 Q. Did you also receive information from Ekim Alptekin or
22 from his lawyer?

23 A. We did.

24 Q. So you mentioned interviewing the defendant, how many
25 formal in-person interviews did you conduct with the

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1 defendant?

2 A. Two.

3 Q. At the beginning of those interviews, did you give the
4 defendant any warnings?

5 A. We did.

6 Q. What warnings did you give him?

7 A. We delivered what's referred to by lawyers as an Upjohn
8 warning, in which we said that we represented General Flynn,
9 and we represented the Flynn Intel Group, but we did not
10 represent him personally, and that therefore the
11 attorney-client privilege was controlled by the corporate
12 entity FIG and not by him personally.

13 Q. Is that your standard practice when interviewing
14 corporate employees?

15 A. Generally, it is.

16 Q. Aside from those formal interviews, did the defendant
17 communicate information to Covington any other way?

18 A. Yes. He, on some occasions, sent us e-mails, often
19 through Kristen Verderame, or it might be an e-mail to both
20 Kristen Verderame and to me, might have been.

21 And there was at least one phone call, but most of
22 the information was conveyed by e-mail or, I should add,
23 sometimes he would share information with Kristen Verderame,
24 and she would then call us and relay information.

25 Q. So I would now like to discuss what specific information

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1 you gathered from the interviews and the documents you just
2 referred to.

3 Is there a name that was used by the defendant and
4 others at FIG to refer to the work that FIG did under its
5 contract with Alptekin's company Inovo?

6 A. Yes. Mr. Rafiekian and others at FIG generally referred
7 to the work for Inovo as "Project Confidence."

8 Q. I'm going to use the same term.

9 In the course of gathering facts to respond to the
10 FARA Unit's inquiry, did you try to determine whether Turkish
11 government officials were involved with Project Confidence?

12 A. We did.

13 Q. Why did you try to determine whether Turkish government
14 officials were involved?

15 A. That was relevant to several questions. It was relevant
16 to whether FARA registration was required. It was relevant to
17 who would need to be listed as the foreign principal on the
18 registration. It was also relevant to whether or not it was
19 sufficient to register under a different statute called the
20 Lobbying Disclosure Act, in lieu of registering under FARA.

21 Q. So I would like to pull up Government Exhibit No. 14,
22 which is an e-mail dated August 8, 2016, from Ekim Alptekin to
23 the defendant and General Flynn.

24 A. Okay.

25 Q. Could you please read that e-mail to yourself.

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1 (A pause in the proceedings.)

2 THE WITNESS: Yes.

3 BY MR. TURGEON:

4 Q. Did you ask the defendant about whether this e-mail was
5 related to Project Confidence?

6 A. I believe we asked about this e-mail and several other
7 related e-mails, yes.

8 Q. What did the defendant tell you?

9 A. He said that it was not related to Project Confidence,
10 but rather that it related to a completely separate project
11 that had been contemplated and discussed, which would have
12 involved the Turkish government being the client, but which
13 never came to fruition.

14 Q. Are you aware of a name being used to refer to that
15 earlier project that the defendant claimed didn't come to
16 fruition?

17 A. Our understanding is that that earlier project that
18 didn't come to fruition was referred to as Project Truth.

19 Q. Did you ask the defendant whether this earlier project,
20 Project Truth, was part of Project Confidence?

21 A. Yes.

22 Q. What did he tell you?

23 A. He said it was not; he said it was completely separate
24 and that Project Truth never actually happened.

25 Q. Did you ask the defendant who the client for that earlier

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1 project was going to be?

2 A. Yes.

3 Q. And what did he say?

4 A. That that would have been -- sorry. That the client
5 would have been the government of Turkey.

6 Q. Did you ask the defendant why the project didn't come to
7 fruition?

8 A. We either asked it or he offered the explanation on his
9 own.

10 Q. What was the explanation that he offered?

11 A. My recollection is that he said that the Turkish
12 government had backed out of the discussions. And that after
13 they backed out of the discussions, it came out Alptekin said
14 that he wanted to engage FIG under a separate project through
15 his dutch company, Inovo.

16 Q. So I would like to pull up Government Exhibit 16, please,
17 which is an e-mail from two days later, August 10, 2016, again
18 from Alptekin to the defendant and General Flynn.

19 Could you please read that e-mail to yourself.

20 (A pause in the proceedings.)

21 A. Okay.

22 Q. Did you question the defendant about Alptekin saying that
23 he had a green light to discuss confidentiality, budget, and
24 the scope of the contract?

25 A. We did.

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1 Q. What did he say?

2 A. He said, again, that this related to an earlier project
3 that did not come to fruition, a contract that was never
4 actually entered into, in which the client would have been the
5 government of Turkey.

6 Q. Did you ask the defendant about the Turkish government's
7 role in the project that FIG actually did, Project Confidence?

8 A. We did.

9 Q. What did he say?

10 A. My recollection is that he said the Turkish government
11 played no role in the contract that was actually entered into
12 with Inovo.

13 Q. Did you ask General Flynn the same question?

14 A. We did.

15 Q. What did General Flynn say?

16 A. He indicated that, the best of his understanding, the
17 client was Inovo, the Turkish government was not involved with
18 the exception of a meeting that occurred on September 19,
19 2016, in New York with Turkish ministers at which there was a
20 brief discussion of -- or a bit of a discussion of the Inovo
21 contract.

22 Q. So let's talk about that meeting.

23 Through your fact gathering did you become aware --
24 strike that.

25 At your first interview with the defendant, did you

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1 ask the defendant about the relationship between that meeting
2 and Project Confidence?

3 A. Yes.

4 Q. What did he say?

5 A. My recollection is that he said that meeting in New York
6 was unrelated to Project Confidence.

7 Q. So next, I would like to discuss what publications were
8 part of Project Confidence.

9 In the course of gathering facts to respond to the
10 FARA unit's inquiry, did you try to determine whether FIG
11 published any articles as part of Project Confidence?

12 A. We did.

13 Q. Why did you try to determine whether FIG published
14 articles as part of Project Confidence?

15 A. Publishing articles under a contract with a foreign
16 principal, such as Inovo, would be one thing that might
17 trigger FARA registration, depending on all the facts and
18 circumstances. And, in addition, if you did register under
19 FARA, you would have to disclose articles that you wrote,
20 certain other things that you did on behalf of your client,
21 and so we would need to identify any articles in order to
22 properly disclose them in the FARA filing.

23 Q. Did the inquiry letter from the FARA unit specifically
24 reference any op-eds?

25 A. It did.

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1 Q. So under FARA, are there any requirements for
2 informational materials such as op-eds?

3 A. Yes.

4 Q. What are those requirements?

5 A. FARA requires that any informational materials that are
6 distributed to two or more persons under that contract must be
7 filed with the U.S. Department of Justice within 48 hours and
8 publicly disclosed on the FARA website. And, in addition, any
9 such materials must contain a disclaimer or a legend
10 indicating that it was prepared on behalf of the foreign
11 principal and additional information is available at the U.S.
12 Department of Justice.

13 Q. Okay. Can you take a look at Government Exhibit No. 50,
14 please? Which I believe is not -- is not in evidence.

15 A. Okay.

16 Q. Have you seen that before?

17 A. I have.

18 Q. What is it?

19 A. This is the op-ed that I mentioned earlier that
20 General Flynn published in *The Hill* in November of 2016.

21 MR. TURGEON: Your Honor, the Government moves
22 Exhibit No. 50 into evidence.

23 THE COURT: Any objection?

24 MR. MACDOUGALL: No objection.

25 THE COURT: Without objection, Government 50 is

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1 admitted.

2 (Government's Exhibit No. 50
3 admitted into evidence.)

4 BY MR. TURGEON:

5 Q. On what date was that op-ed published?

6 A. November 8, 2016.

7 Q. Was that during Project Confidence?

8 A. It was.

9 Q. And what was the subject matter of that op-ed?

10 A. It concerned a Turkish exile living in Pennsylvania named
11 Fethullah Gulen.

12 Q. What position did the op-ed take with regard to Gulen?

13 A. The op-ed advocated extraditing Gulen back to his home
14 country of Turkey.

15 Q. Are there any labels or legends on that op-ed?

16 A. No, there are not.

17 Q. So take a look at Government Exhibit 45A, please, which
18 is an e-mail dated November 2, 2016, from the defendant to
19 Ekim and to Bob Kelley attaching a draft to the op-ed, which
20 is Government Exhibit 45B.

21 Could you please read that e-mail, Exhibit 45A, to
22 yourself?

23 A. Okay. I've read it.

24 Q. Do you see at the top where it says, "A promise made is a
25 promise kept"?

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1 A. I do.

2 Q. Did you ask the defendant about whether the op-ed was
3 part of Project Confidence?

4 A. We did.

5 Q. Did he say it was part of Project Confidence or it wasn't
6 part of Project Confidence?

7 A. He said it was not part of Project Confidence.

8 Q. Did you ask the defendant whose idea it was to write this
9 op-ed?

10 A. We did.

11 Q. What did he say?

12 A. He said it was General Flynn's idea to write it.

13 Q. Did you ask the defendant who wrote the op-ed?

14 A. We did.

15 Q. What did he say?

16 A. He said that General Flynn wrote it but that he helped
17 him with the writing of it and also brought in an editor to
18 help with editing it, a gentleman named Hank Cox.

19 Q. Did you ask the defendant about how the op-ed was placed
20 in *The Hill*?

21 A. We did.

22 Q. What did he say?

23 A. He said that he had asked a public relations firm called
24 Sphere to help place it in the media.

25 Q. What was Sphere's role on Project Confidence?

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1 A. Sphere was a subcontractor to FIG on the Inovo contract.
2 They are a public relations firm, and they are engaged in
3 providing public relations or media support to FIG in
4 connection with the Inovo contract.

5 Q. Did FIG pay Sphere for this work?

6 A. FIG paid Inovo as a subcontractor, yes.

7 I'm sorry, I misspoke. FIG paid Sphere as a
8 subcontractor.

9 Q. Thank you.

10 Did the defendant say anything about whether placing
11 the op-ed was part of Sphere's public relations work on
12 Project Confidence?

13 A. To the best of my recollection, he said it was not, that
14 he had instead asked Sphere to help place this sort of as a
15 favor, because it had to be placed very quickly, and they had
16 the contacts in order to help get it placed.

17 Q. So, according to the defendant, was the op-ed part of
18 Project Confidence?

19 A. He said it was not.

20 Q. Did you ask General Flynn whether the op-ed was part of
21 Project Confidence?

22 A. We did.

23 Q. What did General Flynn say?

24 A. He said it was not part of Project Confidence. It was
25 something that he had wanted to do. Though his interest in

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1 the issues covered in the op-ed had in part been generated by
2 the work that they were doing for Inovo -- Project Confidence
3 work had focused him on these issues, he had been thinking
4 about it and he wanted to write this op-ed.

5 Q. Take a look at Government Exhibit 48A, if you would,
6 which is already in evidence. That's an e-mail dated
7 November 4, 2016, from the defendant to Alptekin attaching
8 another draft of the op-ed, which is Government Exhibit 48B.

9 A. Okay.

10 Q. Can you please read the first four sentences of that
11 e-mail to yourself?

12 A. Okay.

13 Q. Now, please take a look at Government Exhibit 49, which
14 is an e-mail the following day, November 5th, from Alptekin
15 back to the defendant.

16 Could you please read that e-mail to yourself?

17 A. Okay.

18 Q. Did you ask the defendant why he sent drafts to the op-ed
19 to Alptekin?

20 A. We either asked it or he volunteered an answer.

21 Q. What did he say?

22 A. My best recollection is he said something along the lines
23 of, you know, sort of for client relations reasons he wanted
24 Ekim to see it to be aware of it and that that's why he shared
25 it with him.

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1 Q. Did you ask the defendant what Alptekin's reaction to the
2 op-ed was?

3 A. Again, we either asked or he offered an explanation.

4 Q. And what did he say?

5 A. He said that Alptekin was not happy with it, did not want
6 it to be -- and did not want it to be published because it
7 referred to something called the Muslim Brotherhood in a way
8 that, in Alptekin's mind, would be upsetting to the Turkish
9 government.

10 Q. Okay. I would like you to take a look, please, at what's
11 been marked as Government Exhibit 93B.

12 A. Okay.

13 Q. Have you seen that document, before?

14 A. Yes.

15 Q. What is it?

16 A. This is a letter from the law firm, Arent Fox, which was
17 representing Mr. Alptekin.

18 Q. Who signed that letter?

19 A. It was signed by a lawyer at Arent Fox named Matt Nolan.

20 Q. What's the date of the letter?

21 A. January 18, 2017.

22 Q. What do you recall about how Covington got this
23 memorandum?

24 A. My best recollection is that Mr. Rafiekian had sent it to
25 Kristen Verderame and that she and -- that she, in turn,

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1 forwarded it to me and perhaps others at Covington.

2 Q. Was that during Covington's fact gathering?

3 A. Yes.

4 MR. TURGEON: Your Honor, the Government moves
5 Exhibit 93B into evidence.

6 THE COURT: Any objection?

7 MR. MACDOUGALL: Yes, Your Honor.

8 THE COURT: All right. Let me see counsel at the
9 bench.

10 (Bench Conference.)

11 THE COURT: What's the objection?

12 MR. MACDOUGALL: Your Honor, this is hearsay. This
13 is a straight hearsay objection.

14 THE COURT: All right.

15 This was -- this is provided, my understanding from
16 the witness's testimony, from Verderame to Covington, as part
17 of its fact gathering process.

18 MR. TURGEON: Yes, Your Honor. It's a document that
19 Covington quoted from in drafting the FARA filing.

20 THE COURT: All right.

21 I'm going to let it in for that purpose. I'm going
22 to give an instruction to the jury.

23 MR. TURGEON: All right. Thank you, Judge.

24 (Open court.)

25 THE COURT: Over objection, Exhibit 93 will be

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1 admitted for the limited purpose of establishing that
2 information that Mr. Kelner had received as part of his fact
3 investigation.

4 Ladies and gentlemen, this document is similar to
5 the other ones that we've been allowing. It is being admitted
6 not as evidence that anything in this document that's stated
7 is true, but simply that it reflects information available and
8 provided to Mr. Kelner and Covington as part of its
9 investigation and preparation of the FARA statement.

10 (Government's Exhibit No. 93
11 admitted into evidence.)

12 BY MR. TURGEON:

13 Q. Could you please describe the memorandum's subject matter
14 for the jury?

15 A. The memorandum covered a wide range of issues, but one
16 key focus of it was whether or not Mr. Alptekin was an agent
17 of the Turkish government, either directly or through some
18 other entity.

19 Q. Did you request this memorandum?

20 A. No.

21 Q. Before you received the memorandum, did you know that
22 Alptekin had been speaking with attorneys?

23 A. To the best of my recollection, we did not.

24 Q. Did you know that Alptekin was having this memorandum
25 prepared?

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1 A. The best of my recollection, no.

2 Q. Does the memorandum say anything about whether Alptekin
3 was consulted about a draft of the op-ed?

4 A. I believe it says that he was not consulted about a draft
5 of the op-ed.

6 Q. So can I direct your attention to page 3, please?

7 Could you please read the bottom paragraph of page 3
8 to yourself?

9 A. Okay.

10 Q. What does the memorandum say about whether Alptekin was
11 consulted about a draft of the op-ed?

12 A. I wonder if it could be kept up on the screen so I can
13 see it.

14 Q. Sure.

15 A. Thank you.

16 I'm sorry, ask the question again.

17 Q. My question was: What does the memorandum say about
18 whether Alptekin was consulted about the draft?

19 A. It says that he was not consulted about the draft.

20 Q. Thank you.

21 So now I would like to discuss the purpose of
22 Project Confidence. In the course of gathering facts to
23 respond to the FARA unit's inquiry, did you try to determine
24 the purpose of Project Confidence?

25 A. We did.

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1 Q. Why did you try to determine the purpose of the project?

2 A. The purpose of the project was particularly relevant to
3 whether it was sufficient simply to register under a different
4 statute called the Lobbying Disclosure Act, because FIG had
5 filed a registration under the Lobbying Disclosure Act
6 previously. And the purpose would make a difference in terms
7 of whether that registration was sufficient versus there being
8 a need to nonetheless register under the Foreign Agents
9 Registration Act.

10 Q. Under what circumstances can an entity satisfy its FARA
11 obligations by registering under the LDA instead of under
12 FARA?

13 A. There's an exemption in the Foreign Agents Registration
14 Act that would allow an entity to satisfy its FARA obligation
15 by instead registering under a different statute called the
16 Lobbying Disclosure Act if certain conditions are met. And
17 those conditions include that the client is not a foreign
18 government or a foreign political party; that the registrant
19 has engaged in some federal lobbying activities; and that a
20 foreign government or a political party is not the "principal
21 beneficiary" of the work that's being performed.

22 Q. Did Covington try to determine whether FIG's activities
23 under Project Confidence principally benefited a foreign
24 government?

25 A. We did.

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1 Q. In trying to make that determination, did you review work
2 product generated as part of Project Confidence?

3 A. We did.

4 Q. What was the subject matter of the work products created
5 as part of the project?

6 A. All or virtually all of the work product generated by
7 FIG, in connection with the Inovo contract, related to the
8 Turkish exile, Fethullah Gulen.

9 Q. Did you identify any work product that was not about
10 Gulen?

11 A. Not to the best of my recollection.

12 Q. Did all of this work product portray Gulen in a positive
13 light or in a negative light?

14 A. It portrayed him in a negative light.

15 Q. Did you ask the defendant what the purpose of the Project
16 Confidence was?

17 A. Yes.

18 Q. What did the defendant tell you about the purpose of the
19 project?

20 A. He said the purpose of the project was to improve the
21 U.S. business communities' confidence in the Turkish economy,
22 and to improve the economic environment between Turkey and the
23 United States.

24 Q. Did you ask General Flynn about the purpose of Project
25 Confidence?

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1 A. We did.

2 Q. What did General Flynn say?

3 A. He also said that the purpose was to improve the U.S.
4 business communities' confidence in the Turkish economy and to
5 improve the business climate or environments between Turkey
6 and the United States and to -- to encourage U.S. investment
7 in Turkey.

8 Q. Next, I would like to talk about payments that FIG made
9 during Project Confidence.

10 So in the course of gathering facts to respond to
11 the FARA inquiry, did you try to identify the flow of money
12 between FIG and Alptekin or Inovo?

13 A. We did.

14 Q. Why did you try to determine how money flowed?

15 A. There were several reasons, but the main reason was
16 that -- well, there were several reasons. One reason is that
17 if a FARA filing was filed, we would have to disclose payments
18 made and payments received by FIG.

19 In addition, if there was direct funding coming into
20 FIG from the Turkish government or funds routed through Inovo
21 from the Turkish government, that would have been relevant to
22 who the real foreign principal was and who would have to be
23 disclosed as the foreign principal.

24 We also wanted to understand some of the things that
25 we saw in the money flow so that we could be sure that we were

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1 disclosing those things on the form that needed to be
2 disclosed.

3 Q. What things are you referring to when you mention
4 "things"?

5 A. There were, I believe, two \$40,000 payments that showed
6 up in FIG's accounting records as payments from FIG back to
7 Ekim Alptekin. And we wanted to understand the circumstances
8 around those two payments for a number of reasons, one of
9 which was to understand what we would need to do to properly
10 disclose it on a FARA filing.

11 Q. So to step back, did you identify any contracts between
12 FIG and Alptekin or Inovo?

13 A. Yes. There was -- there were a set of contracts. There
14 was a contract between Inovo and FIG, but there was also a
15 draft contract between FIG and Alptekin personally.

16 Q. So let's talk first about the contract between Inovo and
17 FIG. Can you take a look at what's been marked as Government
18 Exhibit 151B, please?

19 A. Okay.

20 Q. What is that document?

21 A. This appears to be the contract between Inovo and FIG.

22 Q. Do you recognize the Bates prefix at the bottom of that
23 page?

24 A. I do.

25 Q. What is that Bates prefix?

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1 A. FIG EDVA603.

2 Q. What significance does that have for you?

3 A. This indicates that it was produced by Covington in
4 responding to a grand jury subpoena that was issued to FIG.

5 MR. TURGEON: The Government moves to admit Exhibit
6 151B into evidence.

7 THE COURT: Any objection?

8 MR. MACDOUGALL: No objection.

9 THE COURT: 151B is admitted.

10 (Government's Exhibit No. 151B
11 admitted into evidence.)

12 BY MR. TURGEON:

13 Q. On this first contract, who is the client and who is
14 providing the services?

15 A. On the first contract, the client was Inovo and the
16 service provider was FIG.

17 Q. What is the amount of that contract?

18 A. I believe it was \$600,000.

19 Q. How was that \$600,000 to be paid, according to the
20 contract?

21 A. The contract specifies it would be paid in three payments
22 of \$200,000 each.

23 Q. So let's talk about the second contract, the draft
24 contract you mentioned.

25 Can you take a look at Government Exhibit 25D, which

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1 I believe is already in evidence?

2 A. 25D?

3 Q. That's right. I believe it should be on your screen as
4 well.

5 A. Oh, I see it.

6 Q. On this second contract, who is the client and who is
7 providing the services?

8 A. Under this contract, the client would be FIG, and the
9 services would be provided by Alptekin.

10 Q. Did you ask the defendant why there was one contract
11 where Alptekin's company Inovo was supposed to pay FIG, and
12 this second contract with Alptekin was supposed to get paid by
13 FIG?

14 A. Yes.

15 Q. What did the defendant say about that?

16 A. He said that there had been consideration of retaining
17 Alptekin as a consultant on the project so that he could
18 provide advice regarding local conditions in Turkey, but that
19 Alptekin never actually became a consultant; he never actually
20 rendered consulting services to FIG.

21 Q. Do you see at the bottom of page 1 under Compensation,
22 where it says, "Parties agree that the advisor shall receive a
23 mobilization fee of \$40,000"?

24 A. I do.

25 Q. "At the execution of this agreement. Subsequent payments

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1 shall follow." And it goes on from there.

2 A. I do.

3 Q. In the course of your fact gathering, did you identify
4 \$40,000 payments from FIG to Alptekin's company, Inovo?

5 A. We did.

6 Q. How many \$40,000 payments were there?

7 A. To the best of my recollection, there were two \$40,000
8 payments.

9 Q. So if you could take a look at Government Exhibit 35B,
10 which is in evidence, which is an invoice from Inovo to FIG
11 dated October 14, 2016.

12 What is the amount of that invoice?

13 A. \$40,000.

14 Q. What does that invoice say that the payment is for?

15 A. It says, "Consultancy fee Confidence Project."

16 Q. I think you mentioned that Covington reviewed FIG's
17 accounting records as part of its fact gathering; is that
18 correct?

19 A. Correct.

20 Q. According to the accounting records, how were \$40,000
21 payments recorded?

22 A. My recollection is that they were recorded as consultancy
23 fees.

24 Q. So I would like to pull up Government Exhibit 33C, which
25 is an e-mail from three days before the date of that invoice

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1 we just looked at. It's dated October 11, 2016, from the
2 defendant to General Flynn's son, Michael Flynn, Jr., copying
3 General Flynn and Alptekin.

4 Can you please read that e-mail to yourself?

5 A. Okay.

6 Q. Do you see at the top where it says -- where the
7 defendant says, "Please initiate and execute a wire transfer
8 in the amount of \$40,000 from Flynn Intel Group"?

9 And it refers to consulting services that he's
10 providing to FIG on the Confidence Project.

11 A. I do.

12 Q. Did you ask the defendant about that e-mail?

13 A. We did.

14 Q. What did he say about that e-mail and the payment?

15 A. He said that the \$40,000 payments, both of them, to
16 Alptekin were actually refunds, not consulting fees. So they
17 were refunds for public relations and lobbying services that
18 had not been rendered by FIG but which Alptekin had been
19 expecting.

20 Q. Could you please take a look at -- back at Government
21 Exhibit 93B, the memorandum from Alptekin's lawyers?

22 On the third page in the second paragraph, could you
23 please read the last four sentences to yourself where it
24 begins, "FIG introduced Mr. Alptekin to Sphere Consulting"?

25 A. Okay.

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1 Q. And can you tell me how, again, did Covington get this
2 memorandum?

3 A. My recollection is it was sent to us by Kristen Verderame
4 who had received it from Mr. Rafiekian.

5 Q. Do you see where that paragraph refers to lobbying and PR
6 components never materializing?

7 A. It just disappeared from my screen.

8 Q. That's the -- on the third page in the second paragraph.

9 Thank you.

10 A. Okay. I'm sorry, say that again.

11 Q. Do you see there where it refers to lobbying and PR
12 components never materializing?

13 A. I do.

14 Q. From your fact gathering, do you know whether any
15 entities provided lobbying or public relations work on Project
16 Confidence?

17 A. I do.

18 Q. Who performed lobbying or public relations services as
19 part of the project?

20 A. Sphere provided public relations services and I believe
21 some lobbying services as well. In addition, FIG itself
22 engaged in some lobbying service.

23 Q. On behalf of FIG, did the defendant engage in any
24 lobbying?

25 A. He did.

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1 Q. So let me go back to the work Sphere performed. What
2 work did Sphere do?

3 A. To the best of my recollection, Sphere engaged with some
4 media. They, I believe, also had some contacts with state
5 government officials -- although this is stretching my memory
6 a bit -- and they were helping to prepare for distribution to
7 the media of the materials that might be generated by FIG
8 under the Inovo contract.

9 Q. And according to FIG's accounting records, did FIG pay
10 Sphere as part of this work?

11 A. Yes.

12 Q. Now, you mentioned the defendant performing some lobbying
13 services. What lobbying did the defendant do himself?

14 A. My recollection is that he attended at least one meeting
15 with congressional staff at which he discussed Turkey and the
16 subject matter that FIG was working on for Inovo.

17 Q. What subject matter was that that FIG was working on for
18 Inovo?

19 A. Research regarding Fethullah Gulen, the Turkish exile in
20 Pennsylvania.

21 Q. So now I would like to talk about or I'd like to discuss
22 what Covington did with the facts that it gathered.

23 What did Covington do with the facts that it
24 gathered?

25 A. Initially, facts we gathered contributed to the letter

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1 that you showed me earlier that we sent to the Department of
2 Justice on January 11th with what I'd describe as preliminary
3 findings. And then later on we used the information we had
4 gathered to prepare a draft FARA filing which ultimately was
5 filed on March 7, 2017.

6 Q. Did Covington notify the defendant that it planned to
7 register under FARA?

8 A. Yes.

9 Q. On behalf of FIG?

10 A. Yes.

11 Q. What was the defendant's reaction?

12 A. My recollection is that he was not happy about it. In
13 particular, was not happy about the suggestion that FIG's work
14 principally benefited the government of Turkey.

15 Q. Did you have any private conversations with the defendant
16 on this topic?

17 A. I had one -- to the best of my recollection, I had one
18 private conversation where he and I were the only
19 participants.

20 Q. Around what time of day did that conversation take place?

21 A. The only thing I remember is that it was late at night.

22 Q. Was that a phone call?

23 A. Yes.

24 Q. What do you recall the defendant saying on that phone
25 call?

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1 A. I don't remember in great detail what was said in the
2 conversation. What I do remember is that he was concerned
3 about the FARA filing. He told me that he had a heart
4 condition, that he had had either a heart attack or some sort
5 of cardiac event in the past and that, you know, he was upset
6 and concerned about the FARA filing.

7 Q. Okay. I would like to show you six exhibits which are
8 already in evidence, Government Exhibits 56, 58, 61, 64, 65
9 and 66.

10 A. Okay. Get the binder for that, please.

11 Q. That's 56 through --

12 A. Different binder.

13 Q. They are all between 56 and 66.

14 A. Thank you.

15 Okay.

16 Q. Collectively, what are these documents?

17 A. Collectively, these are the FARA filing.

18 Q. Who is the registrant for that FARA filing?

19 A. Flynn Intel Group, Inc. is the registrant, and then there
20 are what's referred to as short form registrations filed by
21 Michael Flynn and by Bijan Rafiekian.

22 Q. When was this filing made?

23 A. March 7, 2017.

24 Q. What lawyers for FIG drafted or had input into the
25 drafting of this FARA filing?

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1 A. Lawyers at Covington, and, in addition,
2 Kristen Verderame.

3 Q. Did Covington ask the defendant questions during the
4 drafting process?

5 A. Yes, generally through Kristen Verderame and perhaps in
6 one or two instances directly.

7 Q. Who on behalf of FIG reviewed a draft of the filing
8 before it was submitted?

9 A. Drafts were reviewed by Mr. Rafiekian and by
10 General Flynn and by Kristen Verderame, and I believe that's
11 it to the best of my recollection.

12 Q. Did the defendant request any edits to the draft?

13 A. He did.

14 Q. What edits did he request?

15 A. There were several. One was that he wanted us to remove
16 from the filing the word "kickback." Another proposed change
17 was that he preferred that it not reference James Woolsey, the
18 former CIA director who had been involved to some extent in
19 the project.

20 In addition, the draft of the filing indicated that
21 he had attended a Turkey-related conference under the
22 contract, and he told us he had not attended that conference
23 so he wanted that removed from the filing.

24 In addition to that, he saw that in the draft filing
25 in the listing of expenditures by FIG it showed the two

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1 \$40,000 payments. The way that they appeared in the
2 accounting records, the filing said that based on the
3 accounting records these showed up as consulting fees and he
4 wanted that changed to refunds.

5 There may have been other edits he proposed but
6 those are the ones that I can recall off the top of my head.

7 Q. All right. Can you take a look at Government Exhibit 65,
8 which is the short form FARA registration statement for the
9 defendant?

10 A. Okay.

11 Q. So, first of all, was the defendant given a draft of all
12 the forms in the FARA filing or just this one form?

13 A. He was at least, in one instance, given the full draft.

14 Q. That includes all the forms?

15 A. Yes.

16 Q. When a FARA presentation is being filed, what short form
17 statements does the registrant need to submit?

18 A. The registrant needs to submit a short form for each of
19 its employees. At a minimum, for each of its employees who
20 perform services under the contract that were not merely
21 clerical or administrative in nature.

22 Q. So in the context of FIG's FARA filing, what does this
23 short form statement for the defendant disclose?

24 A. It discloses the foreign principal for which he was
25 working, which is shown here as Inovo, and it includes a

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1 description of services rendered.

2 Q. So take a look at the bottom of the second page. Whose
3 signature appears there?

4 A. That's an electronic signature for Bijan Rafiekian.

5 Q. How did the defendant sign this form?

6 A. Because it's an electronic filing system, in order to
7 sign it, Covington, which electronically submits the form, has
8 to get authorization from the individual who is signing so
9 that we can apply his electronic signature. So that's what
10 happened here. There was an e-mail exchange with
11 Mr. Rafiekian asking him if after his review of the document
12 he authorized us to file and sign it with his name.

13 Q. And what did he say?

14 A. He said, in so many words, yes, he authorized us to make
15 the filing.

16 Q. All right. I would like to look at a couple of segments
17 of the FARA filing.

18 Could I please direct your attention to Government
19 Exhibit 58?

20 A. Okay.

21 Q. On the first page in item No. 3 under "Name of Foreign
22 Principal," what does it say?

23 A. Inovo BV.

24 Q. Does that reflect what the defendant told you?

25 A. Yes.

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1 Q. What did he tell you?

2 A. That the work was performed for Inovo.

3 Q. Did the defendant suggest any edits to this entry?

4 A. No.

5 Q. All right. On page 2 of the document, under 8B, where
6 the form asks: Is this foreign principal supervised by a
7 foreign government for a political party or other foreign
8 principal or directed by a foreign government for a political
9 party or other foreign principal?

10 What boxes are checked there?

11 A. In the final version the boxes for "no" are checked and
12 there's an indication to see an attachment.

13 Q. Could you please turn to that attachment on the next
14 page?

15 A. Yes.

16 Q. Does anything in that attachment say that Inovo BV was
17 supervised or directed by a foreign government, foreign
18 political party, or other foreign principal?

19 A. No.

20 Q. Do those boxes checked "no" reflect what the defendant
21 told you?

22 A. Yes.

23 Q. What did he tell you?

24 A. He told us that the work was directed by Inovo through
25 Ekim Alptekin and that the Turkish government played no role

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1 in directing the Project Confidence.

2 Q. Did the defendant suggest any edits to these entries?

3 A. Not that I recall.

4 Q. On the next page of that document, could you please read
5 the first sentence of the final paragraph out loud?

6 Where it begins, "Flynn Intel Group does not
7 know..."

8 A. Is it in the attachment?

9 Q. I believe so, yes.

10 A. I have it, yes.

11 Q. Could you please read that first sentence beginning,
12 "Flynn Intel Group does not know..." out loud?

13 A. Out loud?

14 Q. Yes, please.

15 A. "Flynn Intel Group does not know whether or the extent to
16 which the Republic of Turkey was involved with its retention
17 by Inovo for the three month project."

18 Q. Does that reflect what the defendant told you?

19 A. Not exactly, because what the -- what Mr. Rafiekian told
20 us was more categorical than that. He told us that the
21 government of Turkey played no role in the engagement of FIG
22 for Project Confidence, which is referred to here as the three
23 month project.

24 Q. Did the defendant suggest any edits to that entry in the
25 FARA filing?

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1 A. I don't recall that he did.

2 Q. Please take a look at Government Exhibit 61, which is
3 another document that was part of FIG's FARA filing.

4 A. Okay.

5 Q. On page 4 and entry No. 13, can you please read out loud
6 what's written in the beginning with "On his own initiative"?

7 A. Okay.

8 Q. Could you read that out loud, sir.

9 A. I'm sorry.

10 "On his own initiative Michael T. Flynn published an
11 op-ed in *The Hill* on November 8, 2016 that related to the same
12 subject matters as the Flynn Intel Group work for Inovo BV.
13 Neither Inovo BV nor any other person requested or directed
14 publication of the op-ed."

15 Q. Does that reflect what the defendant told you?

16 A. I'm sorry. Could you put that back up on the screen?

17 Q. Sure.

18 A. The whole quote.

19 Partly it reflects what he told us, in that it
20 reflects that General Flynn published the op-ed on his own
21 initiative and that they were not requested to do so by any
22 other person.

23 I would say that the clause that says that the op-ed
24 related to the same subject matter as the Flynn Intel Group
25 worked for Inovo BV was something that -- that we added.

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1 Q. When the defendant reviewed the draft of the filing, did
2 he suggest any edits to that -- to any of that language?

3 A. I don't recall that he did.

4 Q. On page 10 of the same document, can I direct you to the
5 last paragraph. Could you please read the first sentence of
6 that last paragraph out loud, where it begins "In early
7 September..."? Could you read that out loud, please?

8 A. "In early September 2016, Flynn Intel Group was invited
9 by Mr. Alptekin to meet with a group of government officials
10 from Turkey for the purpose of understanding better the
11 political climate in Turkey at the time, as background for the
12 project."

13 Q. Does that reflect what the defendant told you?

14 A. Not exactly.

15 Q. What do you mean by "not exactly"? What did he tell you?

16 A. He did acknowledge that there was a meeting in September
17 of 2016 with Turkish government officials. But he told us
18 that there wasn't discussion of the Inovo contract and he told
19 us that the meeting was not related to Project Confidence.

20 So this language here, regarding the purpose being
21 background for the project, is language that we added based on
22 all the information we had acquired from different sources,
23 but did not come, I don't believe, directly from
24 Mr. Rafiekian.

25 Q. So is it fair to say that the defendant requested -- the

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1 defendant told you, in stronger terms, that the meeting was
2 unrelated to the project?

3 A. Yes. He said that the meeting was simply not related to
4 the Project Confidence.

5 Q. Did the defendant suggest any edits to this language?

6 A. Not that I recall.

7 Q. And finally, higher up on the same page, in the middle of
8 the page, could you please read out loud the sentence
9 beginning with "Flynn Intel Group understood..."

10 A. "Flynn Intel Group understood the engagement to be
11 focused on improving U.S. business organizations' confidence
12 regarding doing business in Turkey, particularly with respect
13 to the stability of Turkey and its suitability as a venue for
14 investment in commercial activity."

15 Q. Does that reflect what the defendant told you?

16 A. Yes.

17 Q. What did he tell you?

18 A. That the purpose of Project Confidence was to improve
19 U.S. -- U.S. business communities confidence in the Turkish
20 economy.

21 Q. Did the defendant suggest any edits to that language?

22 A. No, not that I recall.

23 Q. Can I have the Court's indulgence, Your Honor?

24 THE COURT: Yes.

25 (A pause in the proceedings.)

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1 MR. TURGEON: No further questions, Your Honor.

2 THE COURT: All right.

3 We are going to take our afternoon recess at this
4 time. We'll reconvene in five to -- five to 4:00. During the
5 recess do not discuss this case among yourselves.

6 (Jury dismissed.)

7 THE COURT: Court stands in recess. Mr. Kelner, do
8 not discuss your testimony.

9 (Recess.)

10 (Court proceedings resumed at 3:58 p.m.)

11 THE COURT: I understand there's an issue.

12 MR. TURGEON: Yes, Your Honor. The Government has
13 been provided the exhibits to the defense plan to use during
14 the cross-examination of the witness, and there are a couple
15 of objections that we wanted to raise with Your Honor.

16 THE COURT: All right.

17 MR. TURGEON: We can come to sidebar or here --

18 THE COURT: All right. Why don't you come to
19 sidebar.

20 (Bench Conference.)

21 THE COURT: All right.

22 MR. TURGEON: Your Honor, the first is Defense
23 Exhibit 101, which is the plea agreement of Mr. Flynn.

24 Frankly, Your Honor, that is improper impeachment.
25 The defense can cross-examine Mr. Kelner on Mr. Flynn's

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1 agreement by introducing the document itself or publishing the
2 document to the jury.

3 THE COURT: How did you want to use it?

4 MR. MACDOUGALL: It's straight bias, Your Honor.

5 THE COURT: Bias of this witness?

6 MR. MACDOUGALL: Bias of this witness. This
7 witness's client was Mr. Flynn throughout. Mr. Flynn agreed
8 to cooperate with the government. We believe he violated Rule
9 1.7 throughout by continuing to represent FIG while he was --
10 including in this process -- while also representing General
11 Flynn.

12 MR. TURGEON: He no longer represents General Flynn.

13 THE COURT: Right. What else?

14 MR. TURGEON: The other one was this e-mail, Your
15 Honor. Defense Exhibit No. 90. And the government has --
16 I've been thinking about how this can possibly be introduced
17 other than for the truth of the matter asserted, this top
18 statement, regarding the defendant's or the witness's
19 characterization of the defendant's thinking.

20 And I just -- it is hearsay.

21 MR. MACDOUGALL: State of mind, Your Honor.

22 THE COURT: When was this?

23 MR. TURGEON: Six months after the FARA filing.

24 MR. MACDOUGALL: Your Honor, at the same time he
25 engaged Mr. Kelley, as the Court is aware, he contacted

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1 Covington and tried to engage Mr. --

2 (Interruption.)

3 MR. TURGEON: Your Honor, the witness's state of
4 mind is not relevant.

5 THE COURT: What is this referring to?

6 MR. TURGEON: As I read it, Your Honor, this top
7 e-mail is in regards to what Mr. Kelner said out of court
8 regarding his characterization of how something compares to
9 the defendant's thinking.

10 MR. MACDOUGALL: I ask the Court to read down to the
11 bottom.

12 THE COURT: That's what I'm doing.

13 Who is Mr. Lenhard?

14 MR. MACDOUGALL: Lenhard is the Covington partner
15 who was contacted by Mr. Rafiekian seeking advice on --

16 (Court reporter clarification.)

17 MR. MACDOUGALL: Mr. Lenhard was a partner -- is a
18 partner at Covington who was contacted by Mr. Rafiekian in
19 September 2016 for the purposes of advice under FARA in this
20 matter.

21 MR. TURGEON: If the defense wants to introduce
22 anything about that communication, they can call Mr. Lenhard
23 or the defendant to testify, but introducing Mr. Lenhard's
24 statement for the truth of what Mr. Rafiekian did is similar
25 to hearsay and objectionable for the same reasons.

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1 THE COURT: I'm going to allow him to be
2 cross-examined on this. This is information that he had
3 available to him. And it reflects his own thinking and
4 impressions based on the information he did have.

5 With respect to the --

6 Is that all of them?

7 MR. TURGEON: Yes, Your Honor.

8 THE COURT: Do you want to get into the Statement of
9 Facts?

10 MR. MACDOUGALL: No, Your Honor.

11 THE COURT: The Statement of Facts.

12 MR. MACDOUGALL: Simply the plea agreement to show
13 this witness's bias and essentially protecting General Flynn
14 at the expense of Mr. Rafiekian. So the only things I'm going
15 to get into is the opposition to cooperate and the -- and the
16 immunity it has on this case.

17 MR. TURGEON: Your Honor, that's not proper
18 impeachment as to this witness.

19 THE COURT: How?

20 MR. TURGEON: Right. And if he -- if the defense
21 wants to explore those topics, they can do so without the
22 agreement itself. Nothing about this agreement is relevant to
23 our case, about the contents of the agreement.

24 THE COURT: I think it does go. I am going to let
25 you have some limited examination about the fact that he did

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1 represent Flynn and in connection with resolving his criminal
2 issues and that --

3 What else did you want besides that?

4 MR. MACDOUGALL: That's really the three issues.
5 The continue representation agreement to cooperate with the
6 government and an immunity from any further charges.

7 THE COURT: I'm sorry.

8 MR. MACDOUGALL: Any immunity from further charges.

9 MR. TURGEON: Your Honor, unless the witness denies
10 any of those, we would submit it can't be used to impeach him.

11 THE COURT: You don't necessarily need this?

12 MR. MACDOUGALL: No, Your Honor. I'm going to use
13 it to refresh his recollection.

14 THE COURT: If he refuses and denies it.

15 MR. MACDOUGALL: That's correct.

16 (Open court.)

17 THE COURT: All right. Ready to proceed?

18 MR. TURGEON: Yes, Your Honor.

19 THE COURT: All right. Let's bring in the witness.
20 And the jury.

21 (Witness seated.)

22 (Jury present.)

23 THE COURT: All right. Please be seated. We are
24 ready to proceed.

25 Mr. Kelner, you remain under oath.

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1 THE WITNESS: I understand.

2 THE COURT: Mr. MacDougall.

3 MR. MACDOUGALL: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. MACDOUGALL:

6 Q. Good afternoon, Mr. Kelner.

7 A. Good afternoon.

8 Q. We've met briefly before. My name is Mark MacDougall,
9 and I'm here representing Bijan Rafiekian. Let me ask you
10 just a few preliminary questions just to clarify.

11 You've been a partner at Covington & Burling for
12 close to 22 years; is that right?

13 A. I've been a lawyer at the firm for close to 21 years.
14 I've been a partner since 2004.

15 Q. Okay. You are currently chair of the election and
16 political law practice group; is that right?

17 A. That's right.

18 Q. Okay. And you are -- you would consider yourself an
19 expert on the Foreign Agents Registration Act, I take it?

20 A. I do a lot of work with respect to FARA, and I think
21 that's a fair description.

22 Q. Okay. And your law firm is one of the lead firms in
23 America, isn't it? You wouldn't disagree with that?

24 A. I would not disagree with that.

25 Q. So it's 100 years old this year actually; is that right?

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1 A. That's correct.

2 Q. And you have offices really all over the world; London,
3 New York, Los Angeles, San Francisco, Brussels, Johannesburg,
4 lots of other places, right? You're an international law
5 firm?

6 A. That's correct.

7 Q. And you've got over a thousand lawyers currently
8 employing your firm, including partners; is that right?

9 A. I believe that's correct.

10 Q. Okay. You also have many famous lawyers who passed
11 through your doors. Eric Holder is currently a partner there,
12 President Obama's attorney general; is that right?

13 A. Yes.

14 Q. And John Bolton is currently the national security
15 advisor -- was once an associate of your firm; is that right?

16 A. That's correct. He may have been a partner as well.

17 Q. And the list goes on. Very prominent law firm, you would
18 agree with that?

19 A. I think that's a fair description.

20 Q. So you would agree with it?

21 A. I would.

22 Q. You agree. Okay.

23 Your website says that Covington's Foreign Agents
24 Registration Act practice, at which you're the chair, is one
25 of the oldest and most experienced in the county. You give me

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1 that?

2 A. I think that's true of our political law group. We don't
3 have a distinct FARA practice, but I think that's a fair
4 description of it as well.

5 Q. Okay. That's what your website says. Do you disagree
6 with your website, or are you okay with that?

7 A. If that's what the website says.

8 Q. Okay. It also says that Covington advises consulting
9 firms, think tanks, trade associations, advocacy
10 organizations, and individuals on FARA compliance, and the
11 complex statutory provisions that determine whether activities
12 require registration.

13 You would agree with that, I take it?

14 A. I would agree with that.

15 Q. And it goes on to say, "We, Covington, have handled
16 numerous Department of Justice inquiries, both for FARA
17 registrants and unregistered organizations, including several
18 high-profile inquiries that involve significant media
19 attention and Department of Justice scrutiny."

20 I take it you would include this in one of those?

21 A. I would.

22 Q. So give me a ballpark. How many FARA registrations have
23 you overseen in your 21-year career with Covington?

24 A. It's hard to say with precision, but probably several
25 dozen.

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1 Q. Several dozen FARA registrations?

2 A. Probably.

3 Q. Okay. Just -- and how about inquiries in the Department
4 of Justice?

5 A. They come in different forms. It's a little hard to
6 categorize them, but varying degrees of seriousness, you know,
7 maybe on the order of 20.

8 Q. Okay. How many resulted in an indictment under this one?

9 A. None.

10 Q. So the only one, right?

11 A. That's correct.

12 Q. Okay. You have a partner named Mr. Lenhard?

13 A. I do.

14 Q. Okay. Now, you were hired by the Flynn Intel Group in
15 January of 2017, you testified on direct; is that right?

16 A. Right.

17 Q. But that was not the first inquiry from Mr. Rafiekian to
18 your firm seeking FARA advice, was it?

19 A. That's correct.

20 Q. When was the first inquiry?

21 A. To the best of my recollection, Mr. Rafiekian contacted
22 my partner, Robert Lenhard, in August of 2016.

23 Q. And he contacted him because he had an agreement with
24 Inovo and he wanted to register under FARA; is that right?

25 A. I'm not sure that's correct. I did have a direct

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1 conversation with Mr. Rafiekian.

2 Q. And it was about FARA registration?

3 A. It was.

4 Q. And about whether he -- and about how he should go about
5 registering with regard to the Inovo contract; is that right?

6 A. It was about whether or not they needed to register under
7 FARA.

8 Q. And that's September 2016?

9 A. I believe it was August of 2016.

10 Q. Okay. Late August, early September?

11 A. Around that time.

12 Q. Dates will get important later. Not important now.

13 Okay?

14 A. Okay.

15 Q. So around then, Mr. Lenhard -- Mr. Rafiekian contacts Mr.
16 Lenhard, and it turns out -- do you know what Mr. Lenhard's
17 political affiliation is?

18 A. He is a democrat.

19 Q. Right. And for that reason, I take it, Mr. Rafiekian's
20 inquiry was transferred to you?

21 A. Correct.

22 Q. And your orientation is?

23 A. I'm a Republican.

24 Q. But he didn't hire you for what reason?

25 A. I was aware that he was contacting me because Bob Lenhard

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1 was a democrat, but I informed Mr. Rafiekian that while I was
2 a Republican, I was relatively widely known to be an outspoken
3 so-called "never Trumper." I had publicly opposed the Trump
4 nomination for president.

5 Q. And so Mr. Rafiekian went elsewhere for advice?

6 A. He did.

7 Q. And contacted you -- he then went to Robert Kelley, is
8 that right?

9 A. I now know that to be the case, yes.

10 Q. Right. And as requested Mr. Kelley, as you know, was the
11 same, "How can I register under FARA"?

12 A. I don't know that that's my understanding. My
13 understanding is that he asked Mr. Kelley what their
14 obligation was. I'm basing this on what Mr. Kelley told us.

15 Q. Right. He met with Mr. Kelley. You're aware of that?

16 A. Yes.

17 Q. And he met with Mr. Kelley seeking legal advice?

18 A. That's my understanding, yes.

19 Q. Okay. And that -- and Mr. Kelley gave him that legal
20 advice, and as I think you touched on earlier in your
21 testimony, that legal advice led to Flynn Intel Group
22 registering under the Lobbying Disclosure Act?

23 A. Yes.

24 MR. TURGEON: Objection, Your Honor. That calls for
25 hearsay.

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1 THE COURT: Overruled. It's based on what he
2 received.

3 THE WITNESS: That's my understanding, yes.

4 BY MR. MACDOUGALL:

5 Q. Now, you were engaged in January 2017, you've testified,
6 by the Flynn Intel Group. But you had another client
7 associated with the Flynn Intel Group and that was Mr. Flynn,
8 wasn't it?

9 A. Correct.

10 Q. Okay. So you were engaged by both of them at the same
11 time --

12 A. Correct.

13 Q. -- is that right?

14 Now, to put all of this into context in the
15 environment of your direct testimony, at the time, Donald
16 Trump had been elected president, and Mr. Flynn had been
17 designated to become National Security Advisor upon the advent
18 of a new administration. That was all true?

19 A. True.

20 Q. When they called you during the first couple of days of
21 January of 2017?

22 A. True.

23 Q. And Flynn Intel Group was in the process of stopping his
24 business because it's marquee name, Mr. Flynn, was going into
25 the government?

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1 A. That's right.

2 Q. But there was some concern because the Justice Department
3 had made inquiry about whether a FARA registration was
4 necessary; is that right?

5 A. That's right.

6 Q. So you had these two things going on: You had the
7 representation of Mr. Flynn, about to become National Security
8 Advisor; you had representation of Flynn Intel Group and its
9 issue with the Department of Justice.

10 That's a fair statement of where things stood?

11 A. The only point I would clarify is that the
12 representation, with respect to the Department of Justice, was
13 both on behalf of Michael Flynn and on behalf of FIG.

14 Q. Okay. And Mr. Flynn, at the time, was a retired
15 lieutenant general in the army?

16 A. Yes.

17 Q. His career had been primarily in intelligence?

18 A. Yes.

19 Q. He had been a director of the Defense Intelligence Agency
20 under President Obama?

21 A. Yes.

22 Q. And your impression was he was a really smart guy; is
23 that right? Are you going to disagree with me on that?

24 A. I would say that he is somebody who is very accomplished
25 in life, and I would say very wise. And I would even say very

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1 smart within the field that he worked in, which was
2 intelligence.

3 Q. And intelligence is getting to the facts; isn't that
4 right?

5 A. That's part of it, sure.

6 Q. Getting to the heart of the matter?

7 A. Yes.

8 Q. Okay. And you would probably agree with me that
9 Mr. Flynn is not somebody who is easily fooled, given that
10 he's a career intelligence officer?

11 A. You know, honestly, I don't know that I'm in a position
12 to assess that one way or the other.

13 Q. Okay. Would you please turn -- well, I think it will be
14 on your screen to -- or the book, if we have it -- Defense
15 Exhibit 92 for identification.

16 A. Thank you. Okay.

17 Q. Do you have it in front of you?

18 A. I do.

19 Q. Who prepared this letter?

20 A. It was probably prepared by me. It was certainly edited
21 by me.

22 Q. You recognize this as something that was prepared either
23 by you or under your supervision?

24 A. Yes.

25 Q. Okay. And what letterhead is it on?

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1 A. It's on my letterhead.

2 Q. And what's the date?

3 A. January 9, 2017.

4 Q. To whom is it addressed?

5 A. It's addressed to General Michael T. Flynn, Flynn Intel
6 Group, Inc.

7 Q. And is it reflected, the purpose of this -- of the
8 engagement that you're embarking on is to provide FARA advice;
9 is that right?

10 A. Yes.

11 MR. MACDOUGALL: Your Honor, with that, I would move
12 the admission of Defense Exhibit 92.

13 THE COURT: Any objection?

14 MR. TURGEON: No, Your Honor.

15 THE COURT: Without objection, Defense Exhibit 92 is
16 admitted.

17 MR. MACDOUGALL: Thank you, Your Honor.

18 (Defendant's Exhibit No. 92
19 admitted into evidence.)

20 BY MR. MACDOUGALL:

21 Q. Mr. Kelner, would you please have a look at Defense
22 Exhibit 92 and look at page 3.

23 A. Okay.

24 Q. Do you see that? Now, this letter is addressed to
25 General Michael T. Flynn; is that correct?

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1 A. Well, it's addressed to him at the Flynn Intel Group.

2 Q. Right. Okay. Addressed to General Michael T. Flynn,
3 Flynn Intel Group, January 9, 2017.

4 Do you remember that?

5 A. Yes.

6 Q. And this is what we lawyers call an engagement letter; is
7 that right?

8 A. Yes.

9 Q. An engagement letter is -- it does several things. It is
10 particularly required by the Bar to lay out the terms of the
11 engagement. It's also, for business purposes, to make sure a
12 client understands this is how our representation of you will
13 proceed.

14 Do you disagree with any of that?

15 A. I agree with that.

16 Q. Okay. Please have a look at page 3, the top -- the first
17 paragraph is there in total.

18 Could you read that aloud, please?

19 A. Beginning with "You acknowledge"?

20 Q. Yes, please.

21 A. "You acknowledge, on behalf of Flynn Intel Group, Inc.,
22 that we will also be representing you personally concerning
23 the Foreign Agents Registration Act matter. While we perceive
24 no current adversity between you and Flynn Intel Group, Inc.,
25 if such adversity were to arise later, we would terminate our

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1 representation of Flynn Intel Group, Inc., but would continue
2 to represent you personally. By signing below, you consent to
3 this arrangement on behalf of Flynn Intel Group, Inc., and you
4 represent that you are authorized to so consent on behalf of
5 Flynn Intel Group, Inc."

6 Q. So as of January 9, 2017, you have two new clients,
7 Michael Flynn and the Flynn Intel Group.

8 Do you agree with that?

9 A. Yes.

10 Q. And as you reflect in this letter, you don't perceive
11 there to be any adversity, any difference between the now,
12 legally, but if that happens, Flynn Intel Group's got to go;
13 Is that right?

14 A. Those are the terms of the agreement, that's correct.

15 Q. That was your terms with Flynn Intel Group in January.
16 And Mr. Flynn will stay. You'll keep him, Flynn Intel Group
17 goes; is that correct?

18 A. That's correct.

19 Q. Okay. Now, let's talk a little bit about Flynn Intel
20 Group. The jury has heard lots about it, but not about what's
21 under the hood. It wasn't a big business, was it?

22 A. I would not describe it as a big business, no.

23 Q. For most of the time it had two principal shareholders,
24 Mr. Flynn and Mr. Rafiekian; is that right?

25 A. In terms of principal shareholders, that's correct.

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1 Q. And although there was another board member from time to
2 time, it really only had two board members most of the time;
3 Mr. Flynn, Mr. Rafiekian?

4 A. I don't recall with precision. I thought there was
5 another board member, but I may be misremembering that.

6 Q. And we'll look at the FARA registration in a moment and
7 that may refresh your recollection.

8 It didn't have a lot of business, did it?

9 A. It did not.

10 Q. It didn't have a lot of money, did it?

11 A. It did not.

12 Q. Didn't pay your bills, did it?

13 A. Some of our bills were paid.

14 Q. It didn't pay all of your bills, did it?

15 A. Not all of our bills were paid.

16 Q. But it was high profile because Mr. Flynn was about to be
17 National Security Advisor?

18 A. You're referring to FIG being high profile?

19 Q. Yeah. It had his name on the -- on the letterhead. I
20 mean, that's -- that made it an interesting company, right?

21 A. Certainly Michael Flynn was high profile and
22 derivatively, I suppose FIG was as well.

23 Q. Okay. I'm going to ask you to next take a look at
24 Defense Exhibit 660, which is in evidence.

25 A. Okay.

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1 Q. Do you have it in front of you?

2 A. Yes.

3 Q. Do you need to take a minute to take a look at it, or are
4 you good with it?

5 A. I'm good with it.

6 Q. Okay. Just to remind everyone that this -- this is in
7 evidence. This is dated March 7, 2017. It's addressed to
8 Heather Hunt at the FARA registration unit at the Department
9 of DOJ, the letter is, and it is signed by you, correct?

10 A. The cover letter is signed by me.

11 Q. Right. And the cover letter is the first two pages of
12 the document. And you -- I take it you wrote it or you
13 ultimately approved a draft someone else wrote; is that right?

14 A. Referring to the cover letter?

15 Q. Yeah.

16 A. I think a number of us worked on the letter, but I
17 certainly signed it and therefore approved it.

18 Q. Okay. I would like you to please have a look at the
19 second paragraph.

20 A. Okay.

21 Q. And if you could read -- you can read the whole thing, if
22 you'd like, but I'm principally interested in the first
23 sentence.

24 A. "In September 2016, Flynn Intel Group publicly disclosed
25 its representation of Inovo BV in a Federal Lobbying

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1 Disclosure Act registration that was filed with the Secretary
2 of the Senate and the Clerk of the House."

3 Q. And those are the appropriate places you file an LDA or
4 Lobbying Disclosure Act registration; is that right?

5 A. Correct.

6 Q. This is March 7th. You've had the Department of Justice
7 inquiry, and you're telling the -- Heather Hunt at the FARA
8 registration unit, "I want to make you aware that this client
9 registered in September 2016 under the LDA."

10 That's what you're telling her here, right?

11 A. That's right.

12 Q. And that's because -- and that was done at the
13 suggestion -- at the recommendation of Mr. Kelley, from
14 Mr. Rafiekian -- from whom Mr. Rafiekian sought legal advice?

15 A. That's my understanding, yes.

16 Q. If you could drop down to the fourth paragraph. Now, you
17 mentioned a moment ago that several people helped you prepare
18 this; is that right?

19 A. Yes.

20 Q. Okay. And that's because it was really important?

21 A. I would like to think all of our client matters are
22 really important, but this one was, too, right.

23 Q. This one was particularly important and this language
24 particularly important. You wouldn't disagree with that?

25 A. I think all of our client matters are important,

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1 including this one.

2 Q. Okay. Let's take a look at the fourth paragraph. If you
3 could read that slowly for the jury and in total, please.

4 A. "The department's regulations provide that filing under
5 the LDA is not an option, however, if a foreign government,
6 even though not the client, nonetheless, is the 'principal
7 beneficiary of the work performed.' This is an uncertain
8 standard not based on the statutory language and not defined
9 in the department's regulations.

10 "Nevertheless, because of the subject matter of
11 Flynn Intel Group's work for Inovo BV, which focused on
12 Mr. Fethullah Gulen, whose extradition is sought by the
13 government of Turkey, the engagement could be construed to
14 have principally benefited the Republic of Turkey. To
15 eliminate any potential doubt, the Flynn Intel Group,
16 therefore, is electing to file a registration under FARA in
17 lieu of its prior LDA registration."

18 Q. The engagement could be construed to have principally
19 benefited the Republic of Turkey. That's what you're telling
20 the chief of the FARA registration unit on March 7th about
21 Flynn Intel Group?

22 A. That's right.

23 Q. Okay. And you're also saying that this is an uncertain
24 standard. This is a murky area; is that right?

25 A. That's right.

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1 Q. But you're being careful, and you say, "To eliminate any
2 potential doubt, we are filing this FARA registration, and
3 we're telling you it might represent Turkey."

4 Is that a fair statement?

5 A. Generally, but I would just clarify, we're telling you
6 that it might principally benefit Turkey.

7 Q. Right. Exactly. If I didn't say that, that's what I
8 intended to say.

9 That's what this says: We're being careful. This
10 might principally benefit Turkey. We want to let you know.
11 Notwithstanding the fact we already did the LDA registration?

12 A. That's correct.

13 Q. Okay. And there's no doubt in your mind the Department
14 of Justice got this message? They got your letter?

15 A. I don't have any doubt of that.

16 Q. I'm going to stay with Defense Exhibit A for just a
17 couple minutes. Mr. Kelner, I'd like to ask you -- and
18 unfortunately these pages are not numbered, but I think you
19 know it well enough, you could probably help me find them. If
20 you could turn to Exhibit A to the registration and the
21 attachment.

22 And the attachment is the second page of Exhibit A.
23 It says, "Exhibit A of the registration statement," and then
24 it's the second page of that.

25 A. Yeah.

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1 Q. The attachment you created begins items A through 10. Do
2 you see that?

3 A. I'm looking at a different attachment. Give me just a
4 moment.

5 I've got it.

6 Q. Okay. Begins with Inovo BV is a Dutch company. Do you
7 see that?

8 A. I do.

9 THE COURT: Which exhibit are we working off of?

10 MR. MACDOUGALL: Your Honor, this is Defense Exhibit
11 60, 6-0.

12 THE COURT: All right. 6-0?

13 MR. MACDOUGALL: Yes, sir.

14 BY MR. MACDOUGALL:

15 Q. So let's look at the first numbered paragraph. But
16 before we do that, I take it this was also prepared by you or
17 by lawyers who work for you.

18 A. That's correct.

19 Q. And in the first paragraph --

20 A. Actually, if I can just clarify.

21 Q. Sure.

22 A. And, in addition, Kristen Verderame.

23 Q. And remind the jury who Kristen Verderame is.

24 A. She had been the lawyer for FIG and for General Flynn
25 before we were engaged, and she continued to represent him,

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1 and we were, to some extent, reporting through her.

2 Q. Okay. And just for members of the jury who are not
3 familiar with the ways of big law firms, you, Covington &
4 Burling, have thousands of lawyers all over the world.
5 Kristen Verderame is a sole practitioner. She works by
6 herself; is that right?

7 A. That's my understanding, yes.

8 Q. But she had an existing relationship with Mr. Flynn and
9 the Flynn Intel Group as their lawyer; is that right?

10 A. Yes.

11 Q. And she contacted you three months or so after
12 Mr. Rafiekian first contacted you for the same purpose?

13 A. Yes.

14 Q. Okay. And notwithstanding the fact that she introduced
15 you, she continued work alongside you in this process. So as
16 we hear Kristen Verderame's name, we're talking about that
17 individual lawyer who brought the work to you and brought the
18 client to you but continued to work with you. That's all
19 true, right?

20 A. Yes.

21 Q. Okay. So let's look at paragraph No. 1 on the attachment
22 to the supplement to the registration statement Defense
23 Exhibit 60.

24 Can you read that first paragraph for me?

25 A. Numbered paragraph 1.

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1 Q. Yes, please.

2 A. Just above it, if I could include that, it says,
3 "According to Arent Fox, LLP, counsel to Mr. Alptekin, one,
4 Inovo is a privately owned company that has not received,
5 directly or indirectly, funds or financial support from any
6 government during the course of its engagement of Flynn Intel
7 Group, Inc., including the Republic of Turkey."

8 Q. So as far as you know -- this language kind of gets to
9 the point -- Flynn Intel Group never got any money from the
10 Republic of Turkey?

11 A. As far as I know, as I sit here today, that's correct.

12 Q. And you've never seen any evidence to suggest that?

13 A. I have never seen any evidence to suggest that.

14 Q. I would like you to drop down, please, to the last
15 paragraph on attachment -- the attachment, Exhibit A, to the
16 supplement captioned items 8 through 10. That paragraph is
17 not numbered.

18 Do you see where I am?

19 A. Yes.

20 Q. Okay. And that last paragraph, the final sentence --
21 again, you can read the entire thing if you'd like, but if you
22 could just read aloud for us the last sentence of that final
23 paragraph.

24 A. "Flynn Intel Group is aware that Mr. Alptekin consulted
25 with officials of the Republic of Turkey regarding potential

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1 work by Flynn Intel Group. And Mr. Alptekin introduced
2 officials of the Republic of Turkey to Flynn Intel Group
3 officials at a meeting on September 19, 2016, in New York."

4 Q. That's all true, right?

5 A. To the best of our understanding, yes.

6 Q. All right. And you attach that to your letter and submit
7 it to the Justice Department, believing it's true?

8 A. Yes.

9 Q. And sitting here today, you have no reason to think it's
10 not?

11 A. Let me just reread it one more time.

12 Q. Please.

13 A. That's correct.

14 Q. Okay. And a couple more things on this document -- and,
15 again, we're going to get deep into it, and I apologize to the
16 Court because I don't have page numbers. But if you could go
17 to the form that Mr. Turgeon was asking you about, it's
18 captioned "Supplemental statement pursuant to the Foreign
19 Agents Registration Act of a six-month period ending
20 November 30, 2016, registrant."

21 Do you see that?

22 A. The beginning of the supplemental statement.

23 Q. Yes. For the six-month period ending November 30th, and
24 then there's several pages there.

25 A. Give me a second to find it.

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1 THE COURT: Hold on. I'm trying to find it.

2 It's after the attachment?

3 MR. MACDOUGALL: Yes, Your Honor. It's -- if you
4 see the bylaws of Flynn Intel Group, that's a large document
5 kind of in the middle of the exhibit.

6 THE COURT: Yes.

7 MR. MACDOUGALL: Immediately after that there's a
8 supplemental statement.

9 THE COURT: All right.

10 BY MR. MACDOUGALL:

11 Q. And I would like you to go, please, Mr. Kelner, to
12 page 4.

13 A. I see. Page 4?

14 Q. Yes, please.

15 A. Okay.

16 Q. To item No. 13. I believe Mr. Turgeon asked you about
17 that in particular.

18 THE COURT: Hold on a moment. I don't have it, at
19 least in my exhibit.

20 THE WITNESS: The Bates, Your Honor, is Defense
21 60-19.

22 THE COURT: Dash 19?

23 THE WITNESS: Dash 019.

24 THE COURT: All right. I have it. Well, that's --
25 we're in exhibit 60; is that right?

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1 MR. MACDOUGALL: Defense 60, yes, Your Honor.

2 THE COURT: All right. Let's proceed. I don't have
3 it. That's all right.

4 BY MR. MACDOUGALL:

5 Q. This is item No. 13 --

6 A. Yes.

7 Q. -- at the bottom of the page.

8 THE COURT: Oh, I see it. I do have that.

9 BY MR. MACDOUGALL:

10 Q. Mr. Kelner, we're in the same place, exhibit -- item
11 No. 13?

12 A. Yes.

13 Q. Mr. Turgeon asked you about that. And the last paragraph
14 reads, "On his own initiative, Michael T. Flynn published an
15 op-ed in *The Hill* publication on November 8, 2016. It related
16 to the same subject matters as the Flynn Intel Group work for
17 Inovo BV. Either Inovo BV requested or directed publication
18 of the op-ed."

19 Now, that was included in this supplemental
20 registration when you filed it; is that right?

21 A. Yes.

22 Q. And at the time you were representing Flynn Intel Group
23 as the subject to the registration, right?

24 A. Yes.

25 Q. And you're also representing Mr. Flynn, personally?

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1 A. Yes.

2 Q. And in representing Mr. Flynn personally, you have the
3 benefit of the individual attorney-client privilege; is that
4 right?

5 A. Yes.

6 Q. In fact, the law encourages clients to tell their lawyers
7 everything so that lawyers can do their best work in
8 protecting their interest; is that right?

9 A. That's the policy behind the attorney-client privilege,
10 yes.

11 Q. And you enjoyed, and more importantly, Mr. Flynn enjoyed
12 the attorney-client privilege with you?

13 A. Yes.

14 Q. And if you had any doubt about the integrity or the
15 truthfulness of that statement, you had every opportunity, and
16 maybe you took it, to ask Mr. Flynn, "What's the story,"
17 didn't you?

18 A. Yes.

19 Q. Nothing is stopping you from doing that?

20 A. That's correct.

21 Q. And, finally --

22 MR. MACDOUGALL: Can I have a moment, Your Honor?

23 THE COURT: Yes.

24 MR. MACDOUGALL: Your Honor, the Bates number for
25 Defense Exhibit 60 that I'm now going to go to is 60-0026.

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1 THE COURT: Thank you.

2 BY MR. MACDOUGALL:

3 Q. Finally, Mr. Kelner, on that page, which I think you're
4 probably at now --

5 A. Yes.

6 Q. -- there's another paragraph at the bottom of that
7 supplement that talks about the op-ed again.

8 Could you read that aloud, just the first couple of
9 sentences?

10 A. "In late October and early November 2016, General Flynn
11 of Flynn Intel Group developed an op-ed based, in part, on the
12 research conducted by Flynn Intel Group under the Inovo
13 engagement. The op-ed was not written or published at the
14 request of or under the direction or control of Inovo, the
15 Republic of Turkey, or any other party. No compensation was
16 received for the publication of op-ed.

17 "In addition to General Flynn, Bijan Rafiekian, and
18 Hank Cox participated in drafting. Inovo, Mr. Alptekin, and
19 the Republic of Turkey did not participate in the drafting.
20 Nonetheless, the op-ed addresses subject matter related to the
21 research that Flynn Intel Group conducted for Inovo and a
22 draft of the op-ed was shared with Inovo in advance for
23 publication.

24 "No changes, other than technical edits, were made
25 to the op-ed based on feedback from Inovo.

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1 "To the best of our knowledge, Inovo did not
2 communicate with the Republic of Turkey regarding the op-ed or
3 provide the draft op-ed to the Government. SGR, LLC,
4 government relations and lobbying assisted Flynn Intel Group
5 with placement of the op-ed with *The Hill* publication."

6 Q. And that was all true at the time you submitted it; is
7 that right?

8 A. That was our best understanding of it.

9 Q. And just with the other inquiry, if you had any doubt
10 about that, about Mr. Flynn's involvement in it, you could
11 have called him and had a conversation with him under the
12 personal attorney-client privilege that he enjoyed with you
13 and your firm?

14 A. We could have.

15 Q. I would like you to please, if you would, on the same
16 document -- and I'll stick with the Bates numbers for
17 clarity -- turn to Bates No. 0008.

18 A. Okay.

19 Q. And would you agree with me this is the execution page
20 for the registration form, which we're referring to as Defense
21 Exhibit 60 that was submitted to the FARA registration unit at
22 your direction; is that right?

23 A. Yes.

24 Q. And if you look at about midway down the page where the
25 signature page is electronically signed, which I take it is as

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1 valid as a personal signature if you have the person's
2 authority to do it; is that right?

3 A. Yes.

4 Q. And whose signature is there?

5 A. Michael T. Flynn.

6 Q. Anybody else?

7 A. No.

8 Q. Do you see Mr. Rafiekian's name anywhere?

9 A. Not there.

10 Q. Okay. Please turn forward to -- so -- Bates No. 0011
11 under the execution page. Same question:

12 Did you cause the signature to be affixed
13 electronically?

14 A. One of my colleagues at Covington did.

15 Q. And whose signature is there?

16 A. Michael T. Flynn.

17 Q. Anybody else?

18 A. Not there.

19 Q. So I would like you to compare, if we could, please, this
20 exhibit to another document that would be in your book, and
21 it's Defense Exhibit 95A.

22 A. Thanks. 95A?

23 Q. Yes, please.

24 A. Okay.

25 Q. Do you recognize this document as distinct from Defense

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1 Exhibit 60?

2 A. It's difficult for me to tell whether this is a draft or
3 the final of the final -- of the FARA filing. This is a draft
4 of the FARA filing.

5 Q. It is a draft also prepared by you and your colleague; is
6 that right?

7 A. I believe this is a version that was edited by Kristen
8 Verderame. I'm not certain of that, but I believe that to be
9 the case.

10 Q. But it was prepared by your firm, perhaps edited by her;
11 is that right?

12 A. Yes.

13 Q. And you'd agree with me it predates the final document
14 that was submitted?

15 A. Yes.

16 Q. Whether it's days or weeks, it doesn't really matter. It
17 was an earlier version of the registration statement of
18 Defense Exhibit 60, correct?

19 A. Yes.

20 Q. Okay. I'd like you to have a look at Attachment 2 which
21 appears at Bates No. 0009.

22 MR. MACDOUGALL: Well, Your Honor, first, given the
23 foundation laid, defense would move the admission of Defense
24 Exhibit 95.

25 THE COURT: 95A? Any objection?

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1 MR. TURGEON: No, Your Honor.

2 THE COURT: All right. Without objection, 95A is
3 admitted.

4 MR. MACDOUGALL: Thank you, Your Honor.

5 (Defendant's Exhibit No. 95A
6 admitted into evidence.)

7 BY MR. MACDOUGALL:

8 Q. If you'd look at -- on Exhibit 95A, page 0009, there
9 begins a table captioned "Receipt of Monies"; is that right?

10 A. Yes.

11 Q. And that table is intended to show what disbursements, in
12 this case, the registrant, Flynn Intel Group, made or is
13 making in connection with its registration; is that right?

14 A. The one that says, "Receipt of Monies" reflects payments
15 received by FIG.

16 Q. Okay. And turn to the next page, 0010.

17 A. Yes.

18 Q. And that demonstrates disbursements of monies under
19 Attachment 3; is that right?

20 A. Correct.

21 Q. So that's monies, as I correct myself, paid out by FIG?

22 A. Correct.

23 Q. Up at the top, there's been -- on your direct you talked
24 about the \$40,000 payments that went back to Inovo; is that
25 right?

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1 A. Yes.

2 Q. Now, at the top of -- strike that.

3 If we could go back and do a comparison to Defense
4 Exhibit 60 on page 27, which is the final version of that
5 table, we can do it side by side.

6 The Bates number on Exhibit 60 is 0027. The Bates
7 number on 95A in evidence is 0010.

8 A. Okay.

9 Q. So is it correct, then, if you look at the two payments
10 to Ekim Alptekin in the draft -- Exhibit 95A, in the draft you
11 recite, "Refund for reduction in scope"; is that right?

12 A. That's what it says.

13 Q. So when the draft was prepared, prior to the final,
14 that's what somebody knew in your firm or Kristen Verderame?

15 A. That's what this draft says.

16 Q. That's what it says.

17 Okay. But the final one, if you look at the same
18 dates and the same payments, the same \$40,000 payments about
19 midway down on September 13, 2016, and October 17 --

20 MR. GILLIS: I beg your pardon, if we can take down
21 95, I don't think that --

22 MR. MACDOUGALL: 95A. I'm sorry, Your Honor. We
23 haven't moved in 95.

24 THE COURT: Please take it down.

25 MR. MACDOUGALL: I'm just working with 95A,

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1 Mr. Kelner, and 60.

2 THE WITNESS: I understand.

3 BY MR. MACDOUGALL:

4 Q. So going back to the final version, Defense Exhibit 60,
5 the same \$40,000 payments and the draft that were called
6 "Refund for reduction in scope" are now called "consultancy
7 fee"?

8 A. Correct.

9 Q. So between the time you had the draft, this -- the
10 reflection for reduction in scope was changed to the final
11 consultancy fee; is that right?

12 A. Just to clarify, there were --

13 Q. Please answer my question, then you can clarify.

14 Is that true?

15 A. I think it's important to clarify there were multiple
16 drafts --

17 Q. Is it true? Yes or no? Then you can clarify.

18 A. It's true with respect to this draft, yes.

19 Q. Thank you.

20 Mr. Kelner, again, for people who are fortunate
21 enough not to swim in the aquarium of a big law firm, could
22 you describe for us how time entries are kept by law firms?

23 A. Typically individual lawyers or other law firm personnel
24 record, during a course of a day, the time that they spend on
25 particular matters for different clients, identifying the

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1 client, how much time they spent on the work, whatever it was,
2 and some description of the work.

3 Q. And those time entries are then taken and transformed
4 into bills, invoices are sent to clients in hope that they'll
5 be paid; is that about right?

6 A. Yes.

7 Q. Okay. And your firm, like most firms, does exactly that?

8 A. Yes. Sometimes the time entries go to the client,
9 sometimes they don't, but generally that's correct.

10 Q. Now, between January 3, 2017 and March 7, 2017, you and
11 several of your colleagues, you would agree with me, spent a
12 great deal of time on the Flynn Intel Group registration; is
13 that right?

14 A. Yes.

15 Q. I am going to ask you to please have a look at two
16 exhibits. And in the interest of time, we'll try to get them
17 done quickly. These will be Defense Exhibits 93 and 94 for
18 identification.

19 A. Thank you.

20 Q. Okay. Do you have those in front of you?

21 A. I do.

22 Q. And do you recognize those as time entry runs, I'll call
23 them, for the month ending March 31, 2017 and February 28,
24 2017?

25 A. Yes.

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1 Q. And you would, in the ordinary course, receive these a
2 few days after the end of the month and you would then, from
3 that, prepare your invoice; is that right? That's the
4 process?

5 A. Yes.

6 Q. Okay. And are these forms prepared by people at
7 Covington responsible for this work, accounting, bookkeepers,
8 and so forth?

9 A. I believe so.

10 Q. And I take it lawyers in your firm have a responsibility
11 to report their time in the ordinary course; is that right?

12 A. Yes.

13 Q. And within a rough proximity, these time entries are made
14 contemporaneous within the events, within a day or so,
15 hopefully, without too much time passing. They are done at
16 the same time?

17 A. They should be, yes.

18 Q. And that's a routine practice in your law firm, isn't it?

19 MR. MACDOUGALL: Your Honor, with that foundation, I
20 move the admission of Defense Exhibits 93 and 94.

21 THE COURT: Any objection?

22 MR. TURGEON: No, Your Honor.

23 THE COURT: Without objection, 93 and 94 are
24 admitted.

25 (Defendant's Exhibits Nos. 93-94)

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1 admitted into evidence.)

2 MR. MACDOUGALL: Thank you, Your Honor.

3 BY MR. MACDOUGALL:

4 Q. We talked about the time entries. I'd like to shift over
5 to the second part of that, the invoices, the billing. And
6 for that purpose, ask you to have a look at exhibits --
7 Defense Exhibits 99 and 100 for identification.

8 A. Okay.

9 Q. And would you confirm for me that Defense Exhibit 99 for
10 identification is an invoice issued on March 31, 2017, to
11 General Michael T. Flynn, the Flynn Intel Group, for
12 regulatory advice?

13 A. Yes.

14 Q. And same question with regard to Exhibit 100, except for
15 the dates, is that an invoice issued by your firm to General
16 Michael T. Flynn, Flynn Intel Group for services performed
17 January 31, 2017?

18 A. Yes. I'm pausing for the fact that Exhibit 99, I don't
19 see a cover letter, which would reflect the transmittal. But
20 I presume it was sent.

21 Q. But taking a look, it looks like a bill that you sent; is
22 that right?

23 A. Minus the cover letter, yes.

24 Q. Okay. And like the time sheets, this document is
25 prepared by a person responsible for this work?

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1 A. Yes.

2 Q. Okay. And you have a billing part, you have a duty to
3 send invoices out that record accurately the time; is that
4 right?

5 A. Either -- certainly the bill has to be accurate. It may
6 or may not include the time entries.

7 Q. And these are prepared contemporaneous with the event?

8 A. Roughly contemporaneously, yes.

9 Q. And that's a routine practice as well?

10 A. Yes.

11 MR. MACDOUGALL: With that foundation, Your Honor, I
12 move admission of 99 -- Defense 99 and 100.

13 THE COURT: Any objection?

14 MR. TURGEON: No, Your Honor.

15 THE COURT: All right. Exhibit -- Defense Exhibit
16 99 and 100 are admitted.

17 (Defendant's Exhibit Nos. 99 - 100
18 admitted into evidence.)

19 MR. MACDOUGALL: Thank you, Your Honor.

20 BY MR. MACDOUGALL:

21 Q. Mr. Kelner, I'm just going to ask you a few questions
22 about the time you spent as reflected on these time sheets and
23 on the invoices, and I -- you were -- now, they are in
24 evidence, you're welcome to refer to them to confirm any of my
25 questions, but we will proceed on that basis in the interest

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1 of moving things along.

2 A. Okay.

3 Q. So it's correct, then, in January of 2017, you and your
4 colleagues spent 115 hours working on the Flynn Intel Group
5 FARA matter; is that right?

6 And you can look at Exhibit 100. That may help you
7 out.

8 A. This bill shows 115 hours of time.

9 Q. Right. Professional time. And you, yourself, spent 27.9
10 hours that month; is that right?

11 A. That's what this shows, yes.

12 Q. At a billing rate of \$960 an hour; is that right?

13 A. That's what this shows, yes.

14 Q. What's your current billing rate?

15 A. I believe it is \$1160 an hour.

16 Q. So a client, on average, will pay for an hour of your
17 time \$1160 an hour now?

18 A. What a particular client pays there is --

19 MR. TURGEON: Your Honor, objection, as to the
20 relevance of that.

21 THE COURT: Overruled.

22 BY MR. MACDOUGALL:

23 Q. And at the time it was \$960 for an hour; is that right?

24 A. I don't actually recall, but it appears to be so based on
25 this document.

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1 Q. Okay. So -- and the Flynn Intel Group was billed \$74,979
2 for that month of January; is that right?

3 A. I believe so. The only reason I'm hesitating is whether
4 this is the FIG bill or the Michael Flynn bill. I believe
5 it's the FIG bill, in which case that's correct.

6 Q. It's addressed to Flynn Intel Group, right?

7 A. I believe that's right.

8 Q. So in February you spent -- and you can look at Exhibit
9 99 in evidence for this -- you spent 119 -- you and your
10 colleagues spent 119.8 hours working on this FARA registration
11 matter; is that right?

12 A. That's right.

13 Q. And you -- you, yourself, worked 35.1 hours that month of
14 February?

15 A. That's what this says, correct?

16 Q. And you billed Flynn Intel Group another \$85,422 for
17 February; is that right, Mr. Kelner?

18 (Court reporter clarification.)

19 A. That is what this indicates, yes.

20 Q. And let's go on to March, which you'll find at Exhibit 93
21 in evidence. And that was the month, you'll recall -- I think
22 it was March 7th that you filed the FARA registration form; is
23 that right?

24 A. That's correct.

25 Q. Okay. And that month, even though you filed the FARA

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1 registration form on the 7th, you and your colleague spent
2 228.7 hours working on this matter; is that right?

3 A. Now, another thing, this bill is the Michael T. Flynn
4 bill, if you look at the first page where it says, "Client
5 name." And for the Michael T. Flynn work, it indicates, for
6 that month, a total bill of \$160,000 -- \$161,000.

7 Q. \$160,000. And the reason you know it's also Michael
8 Flynn work is that part of it's redacted, blacked out; is that
9 right?

10 A. Actually, the reason I know it is on the first page of
11 the bill it says, "Client name: Michael T. Flynn," but you're
12 correct, I also know it because of redactions.

13 Q. And the reason for the redactions is the work you were
14 doing for Michael Flynn, personally, was privileged with
15 respect to him and not part of the Flynn Intel Group's
16 representation?

17 A. That is correct.

18 Q. Now, the reason that you recorded several hundred hours
19 over this period of time, as we've just discussed, is you did
20 an internal investigation; is that right?

21 A. I generally don't think I thought of it as an internal
22 investigation, but we reviewed facts in connection with
23 preparing a FARA filing.

24 Q. Extensively?

25 A. Yes.

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1 Q. For hundreds of hours?

2 A. I believe that's correct.

3 Q. You conducted interviews?

4 A. Yes.

5 Q. Met with the clients?

6 A. We met with individuals who worked for Flynn Intel Group.

7 Q. Did open source research, research outside of what the
8 clients told you, you looked at independent records to the
9 best you could?

10 A. Yes.

11 Q. Okay. And you were also in frequent contact with
12 Mr. Flynn; is that right?

13 A. I would not say we were in frequent contact with him
14 during that period.

15 Q. You were not. Let's have a look at Exhibit 100 in
16 evidence.

17 A. Okay.

18 Q. You just testified you were not in frequent contact with
19 General Flynn; is that right?

20 A. Not what I would consider frequent contact.

21 Q. So let's look at the time you entered during the first
22 part of January 2017. And I'm only talking about your
23 entries.

24 Will you agree with me, among other things, on
25 January 2, 2017, you had a meeting with General Flynn?

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1 A. Yes.

2 Q. And the very next day, on January 3, 2017, you had
3 calls -- multiple calls with General Flynn?

4 A. I did see that it says "Calls with General Flynn." As I
5 sit here today, I don't recall there being more than one.

6 Q. But you entered multiple, so at least at one time you
7 thought there was more than one. You wouldn't disagree with
8 that?

9 A. That's possible. It's also possible that it was a
10 typographical error. I recall talking to him that following
11 day.

12 Q. Okay. So the 2nd, the 3rd, let's go to the 4th. The
13 first entry, "Call to General Flynn"?

14 A. Yes.

15 Q. Okay. Let's go to the very next day, the 5th, "Robert
16 Kelner, call to General Flynn"?

17 A. Yes.

18 Q. Let's go to the next day after that, January 6th. Robert
19 Kelner -- well, we got calls, multiple perhaps, with General
20 Flynn?

21 A. Yes.

22 Q. So at least during that period of time you were talking
23 to Mr. Flynn a lot?

24 A. During those first days of engagement, it does appear
25 that we talked.

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1 Q. It does so appear. And if we can go to January 9th,
2 please, your entry. Do you see that on the next page?

3 A. Yes.

4 Q. What's the very last entry you have there? Interview
5 with Bob Kelley?

6 A. Yes.

7 Q. And Bob Kelley, we'll remember, was the lawyer that
8 Mr. Rafiekian went to in September, after --

9 MR. TURGEON: Objection, Your Honor. Attorney is
10 testifying.

11 THE COURT: Overruled.

12 MR. MACDOUGALL: It's cross-examination, Your Honor.

13 BY MR. MACDOUGALL:

14 Q. Mr. Kelley, you'll recall, was the lawyer that Mr.
15 Rafiekian went to to seek advice in September after he came to
16 Mr. Lenhard in your firm. That's who the Bob Kelley is here?

17 A. Yes.

18 Q. Now, I'd like to talk to you, briefly, about your
19 contacts with Mr. Rafiekian. You actually did meet with
20 him -- if you look at your bill for January, Defense Exhibit
21 100 -- on the 16th. Is that right? You have a meeting with
22 Mr. Rafiekian?

23 A. Yes.

24 Q. And then on January 21st, you would agree with me, that
25 you were, by that time, reviewing the materials for the draft

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1 FARA filing?

2 A. We were definitely reviewing materials that ultimately
3 would be used in the FARA filing.

4 Q. That's what you were doing that day?

5 A. Let me take a look.

6 Q. Okay. Let's drop back, if you could, please, to Defense
7 Exhibit 99, which is the invoice for February.

8 A. Okay.

9 Q. On the 14th, your entry shows a conference call with
10 General Flynn; is that right?

11 A. Yes.

12 Q. And then on the 22nd, in the same bill, February 22nd,
13 under your entry, it shows "Interview with General Flynn.
14 Follow-up correspondence, confer with Mr. Smith," and the rest
15 is redacted. And you spent eight hours that day; is that
16 right?

17 A. Yes.

18 Q. Eight hours with General Flynn?

19 A. Actually, if I can just find it.

20 Well, it shows several things on that day, which
21 totaled up to eight hours. Part of that was the interview
22 with General Flynn. I don't think it was an eight-hour
23 interview.

24 Q. It was a long interview, wasn't it?

25 A. I don't recall with precision, but I would -- if I had to

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1 estimate, I think it was probably, more or less, a three-hour
2 interview.

3 Q. You had lots of time to talk to Mr. Flynn, didn't you?

4 A. On that day, yes.

5 Q. Right. And generally you had lots of phone calls, too,
6 right?

7 A. We had several phone calls.

8 Q. And there was no reason you couldn't ask him anything you
9 wanted to ask him during those meetings because you had the
10 attorney-client privilege personally?

11 A. That's correct.

12 Q. Okay. I would like you to have a look please -- and it
13 should be in that book, and if it's not, I apologize. It
14 should be Defense Exhibit 102. If it's not in the book, it
15 will come up on the screen in just a second.

16 A. It's not in the book.

17 Q. In fact, we could turn that off. Let me just ask you
18 some questions about that.

19 You received extensive e-mails from Flynn Intel
20 Group; is that right?

21 A. If you're including everyone at Flynn Intel Group, we
22 received quite a number of e-mails from various people at
23 Flynn Intel Group, yes.

24 MR. MACDOUGALL: Can I have a moment, Your Honor?

25 (A pause in the proceedings.)

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1 BY MR. MACDOUGALL:

2 Q. Do you recall in January -- in January of 2017 receiving
3 a package of e-mails from General Flynn, Kristen Verderame,
4 and Michael that were ten particularly important e-mails?

5 A. I don't recall whether I received e-mails. I do recall
6 that our team at Covington and Kristen Verderame received a
7 set of e-mails from Mr. Rafiekian's custodial file and from
8 others.

9 Q. Would a -- would a piece of correspondence from your firm
10 refresh your recollection as to what you received?

11 A. It might.

12 MR. MACDOUGALL: Okay. Your Honor, with permission,
13 I would like the witness to have a look at Exhibit 102 --
14 Defense Exhibit 102 for identification.

15 THE COURT: Show that to him. I have a copy.

16 (A pause in the proceedings.)

17 BY MR. MACDOUGALL:

18 Q. Does that refresh your recollection, Mr. Kelner?

19 A. Just give me a second to read it, please. Thank you.

20 Q. Sure.

21 (A pause in the proceedings.)

22 THE WITNESS: It doesn't really change my
23 recollection, which is that our team at Covington, and Kristen
24 Verderame, received certain e-mails early on from
25 Mr. Rafiekian's custodial files, and probably others as well.

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1 I don't know that those went directly to me, which is why my
2 recollection is a little bit fuzzy on the details.

3 MR. MACDOUGALL: Your Honor, the attachments, I
4 believe, are loaded in the system and the Court has copies of
5 them, as well as the government. If I could ask -- and I'll
6 do this quickly -- Mr. Kelner to just have a look at each of
7 those e-mails and confirm them?

8 THE COURT: All right. Do we have those? You want
9 to identify them?

10 BY MR. MACDOUGALL:

11 Q. They'll be on your screen, Mr. Kelner.

12 So I would like you to look quickly at Defense
13 Exhibit 102A, which I'll represent to you was attached to the
14 e-mail from Ms. Langdon. Did you have that e-mail?

15 A. Sorry.

16 THE COURT: It should be taken down. It's not in
17 evidence.

18 MR. MACDOUGALL: Yes, it should be taken down, yes,
19 sir. It should be on the witness' --

20 THE CSO: Counselor, it only comes up with
21 everything at one time.

22 MR. MACDOUGALL: Oh.

23 THE COURT: Can you provide hard copies to him?

24 MR. MACDOUGALL: I can. Yes, Your Honor.

25 THE COURT: All right.

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1 THE WITNESS: Thank you.

2 BY MR. MACDOUGALL:

3 Q. So, Mr. Kelner, I'm just going to go through these very
4 quickly. There's 13 of them. Defense Exhibit 102A, do you
5 recognize that as something you had?

6 A. Uhm, I don't question that we had it, but I'm not sure I
7 remember having it.

8 Q. Okay. You don't specifically remember?

9 A. No.

10 Q. Let's go to 102B. E-mail dated July 30, 2016.

11 A. Okay.

12 Q. Do you remember having that?

13 A. I have seen this before. I don't recall when we obtained
14 it.

15 Q. Okay. 102C, please.

16 A. I would say the same thing. I have seen this before; I
17 don't recall when we obtained it.

18 Q. Okay. 102D.

19 A. I have seen this before, and I do recall this is one of
20 the ones that we obtained, I believe, in that initial set of
21 e-mails.

22 Q. 102E.

23 A. I don't remember this one as clearly.

24 Q. Do you question that it was included?

25 A. I don't question it, but I don't actually remember.

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1 Q. 102F.

2 There are multiple copies in each folder, so.

3 A. I see. Okay.

4 I've seen this before, but I don't recall exactly
5 when.

6 Q. 102G.

7 A. I've seen this and this is one of the ones that we
8 obtained very early on.

9 Q. And I take it the prior one you don't dispute you
10 obtained them early on, you just don't recall as you're
11 sitting here today?

12 A. That's correct.

13 Q. 102H, please.

14 A. I recall this one.

15 Q. 102I. A couple more.

16 A. It's vaguely familiar, but I'm not sure.

17 Q. Defense Exhibit 102J.

18 A. I do recall seeing this before.

19 Q. 102K. Two more.

20 A. I'm not certain.

21 Q. You don't dispute it, though?

22 A. I don't dispute it, but I don't particularly remember
23 this one.

24 Q. 102L.

25 A. I recall this one.

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1 Q. You do. And 102M.

2 A. Uhm, I don't clearly recall this one.

3 Q. So reaching the least common denominator, subject the
4 limitations you place on each of these, you don't dispute, as
5 reflected in the length of this e-mail, that you had all of
6 these in January?

7 A. I don't dispute, but I'm not -- I don't have a certain
8 recollection of it.

9 Q. I would like you to turn, please, to Defense Exhibit 91,
10 and which I believe is in evidence. We looked at that
11 earlier.

12 A. Okay.

13 Q. You are a licensed to practice law in the District of
14 Columbia?

15 A. District of Columbia and Maryland.

16 Q. And your office is in the District of Columbia that's
17 your principal place of practice, is that right?

18 A. Yes.

19 Q. Just like me?

20 A. Yes.

21 Q. And as such you are subject to the D.C. Code of
22 Professional Responsibility?

23 A. Yes.

24 Q. And that's really important because that's the law that
25 governs all of us lawyers?

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1 A. Yes.

2 Q. And it tells us what we can do and what we can't do and
3 it's focused largely in protecting our clients, would you
4 disagree with that?

5 A. I would not disagree.

6 Q. Are you familiar with Section 1.7 of the D.C. Code of
7 Professional Responsibility relating to conflicts of interest?

8 A. Yes.

9 Q. Tell me what that means in your own words?

10 A. Rule 1.7 of the D.C. Bar rules lays out the circumstances
11 in which a lawyer either has to cease representing a client
12 because of a conflict of interest or has to obtain a client's
13 informed consent to continue representing them because of a
14 actual or a potential conflict.

15 Q. And could you turn, please, to Defense Exhibit 98, in
16 your book.

17 A. Yes.

18 Q. Do you recognize that as a copy of Rule 1.7 of the D.C.
19 Code?

20 A. It appears to be that.

21 MR. MACDOUGALL: Your Honor, I'd ask that Defense
22 Exhibit 98 be admitted with judicial notice.

23 THE COURT: Any objection?

24 MR. TURGEON: No, Your Honor.

25 THE COURT: All right. Defense Exhibit 98 is

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1 admitted.

2 (Defendant's Exhibit No. 98
3 admitted into evidence.)

4 MR. MACDOUGALL: Thank you, Your Honor.

5 BY MR. MACDOUGALL:

6 Q. Now, could you read the first sentence aloud for me,
7 please, Rule 1.7, Mr. Kelner?

8 A. "Rule 1.7A. A lawyer shall not advance two or more
9 adverse positions in the same matter."

10 Q. That's kind of a simple statement. We can't have two
11 adverse positions or two adverse clients in the same matter,
12 is that right?

13 A. That's correct.

14 Q. And if we go back to the engagement letter, which is
15 Defense Exhibit 92 in evidence. You thought about this,
16 didn't you, when you were being engaged by both Mr. Flynn and
17 Flynn Intel Group?

18 A. Yes.

19 Q. And that's why on page 3 of Exhibit 92, Defense 92 in
20 evidence you talk about what will happen if a conflict arises
21 between the two when Intel Group will go, Mr. Flynn will stay,
22 is that a fair statement of what you said here?

23 A. Yes, it is.

24 Q. And that was because Rule 1.7 requires you to do that and
25 put that in the engagement letter, is that right?

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1 A. The way I would say it that because of Rule 1.7 this is
2 one way that lawyers deal with potential for a conflict.

3 Q. Okay. Now, there came a time, after you filed the FARA
4 registration form, that your client, Mr. Flynn entered into a
5 guilty plea, is that right?

6 A. Yes.

7 Q. And that was in December of 2017?

8 A. Yes.

9 Q. Roughly nine months or so after you filed the FARA
10 registration?

11 A. Yes.

12 Q. And you represented him in that guilty plea in District
13 of Columbia, is that right?

14 A. We did.

15 Q. And you continued to represent Flynn Intel Group?

16 A. We did.

17 Q. Now part of Mr. Flynn's plea agreement -- plea was a plea
18 agreement, is that right?

19 A. Yes.

20 Q. And you negotiated that plea agreement on his behalf?

21 A. Yes.

22 Q. And a plea agreement, for those who don't deal with these
23 things, you'd agree with me there's a contract, an agreement,
24 between the defendant and his counsel and the prosecutors
25 about what else is going to happen in addition to him simply

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1 pleading guilty, do you agree with?

2 A. Yes.

3 Q. Has other stuff in it. And two of the other things that
4 were in Mr. Flynn's plea agreement was an agreement to
5 cooperate, is that right?

6 A. Yes.

7 Q. You drafted it, and I can show it to you if you need to
8 refresh your recollection?

9 A. I wouldn't necessarily we drafted it, but, yes, that's
10 correct.

11 Q. And you signed it?

12 A. Yes.

13 Q. And the agreement to cooperate, you would concede is very
14 broad?

15 A. It is.

16 Q. Mr. Flynn, as part of his agreement with the government,
17 has to help the Government do all kinds of things, is that
18 right?

19 A. Yes.

20 Q. Investigate other cases?

21 A. Yes.

22 Q. Including this one?

23 A. Yes.

24 Q. Testify if called upon?

25 A. Yes.

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1 Q. Provide information?

2 A. Yes.

3 Q. Release documents?

4 MR. TURGEON: Your Honor, we would object. This
5 goes beyond the scope.

6 THE COURT: Overruled.

7 BY MR. MACDOUGALL:

8 Q. You agree with all of that?

9 A. Yes.

10 Q. Okay. And another aspect of the plea agreement in
11 negotiated with Mr. Flynn is that he didn't get prosecuted for
12 anything else?

13 A. Yes.

14 Q. Including this case?

15 A. Yes.

16 Q. We'll just call that getting a pass, you got a pass, is
17 that right?

18 A. I don't know that I would call it that, but you correctly
19 stated or described the agreement.

20 Q. We'll stick with my first characterization.

21 So those two aspects of his plea agreement are
22 present there, you negotiated them, and you continued to
23 represent the Flynn Intel Group, is that right?

24 A. You said continued past tense.

25 Q. You continued after the plea agreement was entered,

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1 December 2017 to represent FIG?

2 A. Yes.

3 Q. And as Mr. Flynn's plea agreement played out, as his
4 cooperation obligation was performed, it became clear that
5 there was an investigation going on of the FARA registration,
6 is that right?

7 A. That was cleared before the plea agreement.

8 Q. I'm sorry.

9 A. That was cleared before the plea agreement.

10 Q. Okay. So you knew about both things when you entered the
11 plea agreement?

12 A. Yes.

13 Q. And so moving from December 2017 into 2018, as
14 Mr. Flynn's cooperation continues, you continue to represent
15 FIG even though FIG is under -- is the subject of the
16 investigation; is that right?

17 A. The way that I would describe it, I think, more
18 accurately is that following the plea agreement there was not
19 any indication that FIG itself was subject to indictment, but
20 there was an ongoing investigation, as it turned out, of
21 Mr. Rafiekian.

22 Q. And who was the registrant under the Foreign Agents
23 Registration Act?

24 A. The registrant was Flynn Intel Group with short form
25 registrations by Mr. Rafiekian and General Flynn.

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1 Q. So there was no legal reason to believe or to know, to
2 know, that Flynn Intel Group couldn't have been prosecuted for
3 this, is there?

4 A. I think it's fair to say that it was possible, but I
5 think for completeness, there was no indication of that, and
6 it was exceedingly unlikely.

7 Q. Even though the Flynn Intel Group was the registrant and
8 registration form was the subject of the investigation?

9 A. Yes, that's right.

10 Q. And you continue to represent both?

11 A. Yes.

12 Q. Okay. And in June 2018, the Government asked for a
13 waiver of the attorney-client privilege of Flynn Intel Group,
14 didn't they?

15 A. Yes.

16 Q. And you gave it to them, didn't you?

17 A. General Flynn, as the CEO of Flynn Intel Group,
18 authorized a waiver, yes.

19 Q. And the letter authorizing that waiver was on your
20 letterhead signed by you?

21 A. Yes.

22 Q. And your client, Mr. Flynn, and your client, Flynn Intel
23 Group, no problem?

24 A. Correct.

25 Q. Okay. In December 2018, Mr. Rafiekian was charged in

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1 this case. You still didn't withdraw, did you?

2 A. We did not withdraw from representing FIG or General
3 Flynn.

4 Q. Continued to represent them. And, in fact, at
5 Mr. Flynn's first sentencing hearing in December 2018, isn't
6 it correct you asked for the sentencing to be continued so
7 that Mr. Flynn can cooperate in this case?

8 A. That's correct.

9 Q. And the judge granted that and put off Mr. Flynn's
10 sentencing so that he could cooperate in this case against
11 Mr. Rafiekian as a result of the FIG registration. That's all
12 true?

13 A. That's correct.

14 Q. And it wasn't until June of this year that your
15 representation of both Mr. Flynn and FIG was terminated; is
16 that right?

17 A. That's correct.

18 Q. So from January 2017 through all of these events, until
19 June of 2019, you continued to represent Michael Flynn and the
20 Flynn Intel Group. That's true?

21 A. That's correct.

22 Q. And it was only in June of 2018 that the Flynn Intel
23 Group got its own lawyers?

24 A. June of 2019.

25 Q. 2019. I apologize. 2019.

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1 And you're aware that on Friday, last Friday, July
2 12th, the Government made the following statement: The United
3 States Government is in possession of multiple, independent
4 pieces of information relating to the Turkish government's
5 efforts to influence United States policy on Turkey and
6 Fethullah Gulen, including information relating to
7 communications, interactions, and a relationship between Ekim
8 Alptekin and Michael Flynn, and Ekim Alptekin's engagement of
9 Michael Flynn because of Michael Flynn's relationship with an
10 ongoing presidential campaign without any reference to the
11 defendant or FIG.

12 Did you know all about that?

13 A. Uhm, I would say no. I learned of that through a media
14 report last week.

15 Q. I'm sorry?

16 A. I learned of that through a media report last week.

17 Q. So you didn't know anything about what the Government
18 characterized as Mr. Flynn's communications, interactions, or
19 relationship with Ekim Alptekin unrelated to Mr. Rafiekian or
20 FIG? You knew nothing about that?

21 A. Not hearing any objection from Mr. Flynn's current
22 counsel, I'll answer the question, though it involves matter
23 of privilege.

24 No, that's news to me.

25 Q. So Mr. Flynn never told you about that?

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1 A. Absent any objection from Mr. Flynn's current counsel
2 based on privilege, no.

3 MR. MACDOUGALL: A moment, Your Honor.

4 THE COURT: I'm sorry.

5 MR. MACDOUGALL: May I have a moment?

6 THE COURT: Yes.

7 MR. MACDOUGALL: Thank you, Your Honor. No further
8 questions.

9 THE COURT: All right. Any redirect?

10 MR. TURGEON: Yes, Your Honor.

11 **REDIRECT EXAMINATION**

12 BY MR. TURGEON:

13 Q. When did Michael Flynn enter his guilty plea in the
14 District of Columbia?

15 A. I believe it was December 1, 2017.

16 Q. Now, I want to ask you, about six months earlier in the
17 spring of 2017, at that time, how many officers did FIG have?

18 A. I believe, at that time, it was General Flynn,
19 Mr. Rafiekian -- it may have been just the two of them.

20 Q. How many employees did FIG have at the time?

21 A. Six months before the guilty plea?

22 Q. Yes.

23 A. At that point, it was -- it was shut down. It had no
24 employees.

25 Q. In the spring of 2017, did Covington ever identify a

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1 potential conflict of interest involving its representation of
2 FIG?

3 A. No.

4 Q. In the spring of 2017, did Covington help the defendant
5 find a lawyer?

6 A. Yes.

7 Q. What did Covington do to help the defendant find a
8 lawyer?

9 A. We recommended Mr. Trout to be Mr. Rafiekian's counsel,
10 and we made an introduction between Mr. Trout and
11 Mr. Rafiekian.

12 Q. Do you see Mr. Trout in the courtroom today?

13 A. I do.

14 Q. Could you please point him out?

15 A. The gentlemen raising his hand.

16 Q. After your recommendation, did the defendant retain
17 Mr. Trout?

18 A. He did.

19 Q. So Mr. -- Mr. MacDougall asked -- showed you an e-mail
20 you received in April 2017, attaching several e-mails that you
21 went through one by one. He asked you, I believe, if you had
22 those e-mails on January 11, 2017.

23 Do you recall whether you had those e-mails in
24 decrypted form at that time?

25 A. It's difficult for me to remember with precision, as I

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1 sit here right now, when we received each of those e-mails.

2 Several of them, as I indicated, are familiar to me. But as I

3 sit here right now, I don't think I can answer, with

4 precision, as to when we were able to view them, including

5 because of decryption issues.

6 Q. So Mr. MacDougall also asked about essentially why

7 Covington made the representations that it made in the FARA

8 filing. So I would like to bring up Government Exhibit 58,

9 which we just saw, please.

10 And you were asked about page 3 of that last

11 paragraph.

12 A. Yes.

13 Q. Now, when was the language in this last paragraph

14 submitted to the Department of Justice?

15 A. March 7, 2017.

16 Q. And is that true of all the statements in the FARA

17 filing?

18 A. Yes.

19 Q. Was that based on your best understanding of the facts at

20 the time?

21 A. Yes.

22 Q. So when you drafted the FARA filing, did you have access

23 to any Skype conversations?

24 A. I don't believe we did.

25 Q. Did the defendant ever -- did the defendant ever provide

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1 you any Skype conversations?

2 A. Not to the best of my recollection.

3 Q. Take a look at Government's Exhibit No. 20, please.

4 Which is a Skype chat between Alptekin and the defendant on
5 August 25, 2016.

6 Do you see on the left where Alptekin says, "Let's
7 talk tomorrow night, assuming I will manage to meet No. 1
8 tomorrow"? And then he goes on to say, "I think I'm meeting
9 MC's boss, not direct boss, but you know who."

10 And in response the defendant says, "Looking forward
11 to speaking with you. And FNI just sent you a confirmation
12 e-mail with some logistical action targets."

13 A. I see that now, yes.

14 Q. And Mr. Alptekin continues, "My assumption based on MC's
15 requests to come to the third bridge opening tomorrow for
16 final instructions, either way he said, We are a full go."

17 A. I see that.

18 Q. Did the defendant give you a copy of this Skype chat or
19 tell you about it?

20 A. No.

21 Q. Had you seen this Skype chat and knew that Alptekin was
22 saying that he was meeting with No. 1, MC's boss, and that
23 MC -- and said that MC said they were a full go, would you
24 have pressed the defendant and General Flynn on their claims
25 that Turkish government officials were not involved in the

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1 project?

2 A. Yes.

3 MR. TURGEON: Court's indulgence, Your Honor.

4 (A pause in the proceedings.)

5 BY MR. TURGEON:

6 Q. Sir, I would like you to take a look at Government
7 Exhibit 67J, which is a Skype chat between Alptekin and the
8 defendant on September 8, 2016.

9 In this chat, Alptekin says, "Hi, Bijan. Will send
10 the agreement. Just left PM's office." And the defendant
11 responds, "Thank you, Ekim. MF and I are going to meet in 30
12 minutes at 1400 hours."

13 Did the defendant give you a copy of this Skype chat
14 or tell you about it?

15 A. No.

16 Q. Did he tell you that he had had any Skype chats with
17 Alptekin in which Alptekin said he had just left the PM's
18 office?

19 A. No.

20 Q. Take a look at Government Exhibit 67K, please, which is a
21 Skype chat between Alptekin and the defendant the following
22 day.

23 And do you see on the left where Alptekin asked the
24 defendant for bank account information and then says, "I have
25 the money, but I need to deposit it ASAP before banks close."

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1 A. I see that.

2 Q. Did the defendant give you a copy of this Skype chat or
3 tell you about it?

4 A. No.

5 Q. Did he say anything about Alptekin telling him that
6 Alptekin had the money but needed to deposit it?

7 A. No, not that I recall.

8 Q. Now, Mr. MacDougall had you look at several documents
9 with Michael Flynn's signatures on them.

10 Do you recall that?

11 A. Yes.

12 Q. And those were all documents from FIG's FARA filing; is
13 that right?

14 A. Yes.

15 Q. Was the defendant given a copy of all of those documents
16 to review?

17 A. They were sent through Kristen Verderame. I believe he
18 had a full draft set of the papers. I don't know for sure
19 exactly what he was given in terms of the final draft, because
20 we were working through Kristen Verderame.

21 But he was sent a draft set before the filing, which
22 we understood through Kristen Verderame he had reviewed and
23 signed off on except with respect to certain comments, which I
24 think I itemized for you before.

25 Q. And other than those comments that we went through

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1 originally, did the defendant request any other edits to those
2 documents?

3 A. Not that I'm aware of and not to me.

4 Q. And did the defendant give you his e-mail consent to sign
5 on his behalf?

6 A. He did authorize us to sign the short form registration
7 on his behalf, yes.

8 Q. And now, finally, Mr. MacDougall brought up an earlier
9 draft of the FARA filing that listed those \$40,000 payments as
10 refunds.

11 A. Yes.

12 Q. And then I think you pointed out that the final was
13 changed to list them as consultancy fees; is that correct?

14 A. That's correct.

15 Q. Why did Covington change the characterization of the
16 \$40,000 payments from refunds to consultancy fees?

17 A. We spent a lot of time trying to figure out what those
18 payments were and how to accurately disclose them. And I
19 think we had a number of different drafts with different views
20 by different lawyers on how to handle it.

21 But ultimately when it came time to prepare the
22 final FARA filing and to submit it, we did not believe that
23 there was any evidence to support the proposition that those
24 payments were refunds. And essentially all of the evidence we
25 had referred to them as consultant payments, but we weren't

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1 even completely convinced that they were consulting payments.

2 And so the way we decided to deal with that
3 ultimately was to simply recount in the FARA filing what was
4 in the accounting records and to indicate the accounting
5 records show them as consulting payments.

6 But we did not think there was really any support to
7 list them as refunds.

8 Q. And is that how the defendant represented them to you?

9 A. He represented them as refunds. And as I mentioned, one
10 of his few comments on the draft filing was to request that we
11 change it from consulting fees to refunds.

12 MR. TURGEON: Court's indulgence, Your Honor.

13 (A pause in the proceedings.)

14 MR. TURGEON: No further questions.

15 THE COURT: All right. May the witness be excused?

16 MR. TURGEON: Yes, Your Honor.

17 THE COURT: All right. Mr. Kelner, you're excused
18 and you're not to discuss your testimony with anyone outside
19 the courtroom.

20 THE WITNESS: Thank you, Your Honor.

21 (Witness excused.)

22 THE COURT: Who is the Government's next witness?

23 MR. GIBBS: Grant Smith, Your Honor.

24 THE COURT: Call Mr. Smith, please.

25 THE CSO: Face the clerk and raise your right hand.

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1 Thereupon,

2 **GRANT SMITH,**

3 having been called as a witness on behalf of the Government
4 and having been first duly sworn by the Deputy Clerk, was
5 examined and testified as follows:

6 (Witness seated.)

7 **DIRECT EXAMINATION**

8 BY MR. GIBBS:

9 Q. Good afternoon, sir.

10 A. Good afternoon.

11 Q. Can you please state your name for the record.

12 A. My name is Grant Smith.

13 Q. And who do you work for?

14 A. I work for the Federal Bureau of Investigation.

15 Q. That's the FBI?

16 A. Yes, sir.

17 Q. What is your position with the FBI?

18 A. I'm a forensic accountant.

19 Q. Can you explain what sort of training you have to be a
20 forensic accountant?

21 A. So I have an undergraduate degree in accounting from the
22 University of Tennessee. I have a master's in professional
23 accounting from The University of Texas. I have my CPA
24 license as well as a couple of certifications, the CFE and the
25 CFF.

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1 Q. And are you a certified fraud examiner?

2 A. I am, yes, sir.

3 Q. How long have you been a forensic accountant with the
4 FBI?

5 A. I've worked for the FBI since September of 2010.

6 Q. Now, Mr. Smith, as part of your duties as a forensic
7 accountant with the FBI, did you review financial documents
8 related to the Flynn Intelligence Group or FIG?

9 A. I did.

10 Q. Did you also review communications related to FIG and the
11 defendant, Bijan Rafiekian?

12 A. I did.

13 Q. And did you review financial records for the company
14 called "Inovo"?

15 A. I did.

16 Q. And did you also review corporate records for a company
17 called "Inovo"?

18 A. I did.

19 MR. GIBBS: Your Honor, if we could pull up
20 Government Exhibit 17, it is in evidence?

21 THE COURT: All right. You may.

22 BY MR. GIBBS:

23 Q. And can we enlarge the big paragraph in the middle there?

24 And, Mr. Smith, do you recognize Government
25 Exhibit 17? Is this a document you've seen previously?

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1 A. Yes, it is.

2 Q. And in the paragraph that we are looking at here on this
3 particular e-mail -- well, first of all, this is an August 11,
4 2016 e-mail from the defendant to Ekim Alptekin with the
5 subject "Welcome back."

6 And in the paragraph that's enlarged, what did the
7 defendant say in that paragraph at the bottom about how much
8 the advisory support would be?

9 A. The e-mail states, "I did not touch the advisory support
10 we discussed at the 20 percent."

11 Q. You said "20 percent"?

12 A. Yes, sir.

13 Q. All right. Next, if we can go to Government's
14 Exhibit 18A, which is also in evidence. If we can just
15 enlarge the top.

16 And just for the record, this is in evidence. But
17 if you can just explain what this document is very quickly.

18 A. Sure. This is an e-mail from Bijan Kian to Mike Flynn
19 and Philip Oakley.

20 Q. And if you can just keep your voice up a little bit, sir.

21 A. Yes, sir.

22 Q. Thank you. What's the date of this e-mail?

23 A. It's dated August 11, 2016.

24 Q. And what's the subject of the e-mail?

25 A. "Confidence through clarity campaign - Operation

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1 Confidence."

2 Q. And if we could blow up the portion of the e-mail that
3 has the bullet points.

4 Now, on the first bullet, it says that phase zero
5 will cover to secure active participation of senior advisor
6 COGS or C-O-G-S refers to this cause?

7 Do you see that?

8 A. Yes, sir.

9 Q. Mr. Smith, what does COGS stands for?

10 A. COGS is an acronym that often reflects cost of goods
11 sold.

12 Q. And then if we could blow up the second to last paragraph
13 of Exhibit 18A, please.

14 And in that second to last paragraph, the defendant
15 said, "Attached is the budget for this 90-day campaign."

16 And what did the particular e-mail say was attached
17 to it?

18 A. A budget for the campaign.

19 Q. Let's turn to that. Let's go to Government Exhibit 18B,
20 which is also in evidence.

21 And if we could blow up -- I believe the top
22 portion. Can you go higher than that? Yup, you got it.
23 Thank you.

24 In this particular exhibit, 18B, what is listed as
25 FIG's revenue per month?

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1 A. It lists \$200,000 for a period.

2 Q. And then how about that acronym, COGS, what does it list
3 that as a 20 percent per month?

4 A. \$40,000 per month.

5 Q. All right. Thank you.

6 MR. GIBBS: And, Your Honor, I'd like to publish
7 Government Exhibit 19. This was actually one of the exhibits
8 that was on Exhibit 68, which is the one that Mr. Rosecrans
9 testified about. I believe those were all provisionally
10 admitted, but I wanted to ask first.

11 THE COURT: All right. Any objection to 19?

12 MR. TROUT: No, Your Honor.

13 THE COURT: Without objection, 19 will be admitted
14 and you may publish.

15 (Government's Exhibit No. 19
16 admitted into evidence.)

17 BY MR. GIBBS:

18 Q. All right. And take a look at 19. This has not been
19 published previously. So, Mr. Smith, can you explain what
20 this is?

21 A. This is an e-mail dated August 25, 2016, from Bijan Kian
22 to Ekim Alptekin copying Michael Flynn.

23 Q. And what is the subject of the e-mail?

24 A. "Action update."

25 Q. Now, if we can enlarge the paragraph at the bottom that

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1 begins with "General Flynn."

2 In that paragraph, what did the defendant say that
3 20 percent per month was being allocated for?

4 A. It was for the advisory support cost provided by your
5 firm.

6 Q. And then a couple lines down there, how else did he
7 describe that 20 percent?

8 A. Professional advisory services, or the firm's advisory
9 fee.

10 Q. And then if we could go to Government Exhibit 22A. That
11 is not in evidence, so if you could take a look at that.
12 Thank you, sir.

13 Do you see, sir?

14 A. Yes, sir.

15 Q. What is Government Exhibit 22A?

16 A. It's an e-mail with the subject line of "Confidence" from
17 Bijan Kian with a copy to Michael Flynn, and it's dated
18 September 3, 2016.

19 MR. GIBBS: Your Honor, at this time, we move
20 Government's Exhibit 22A into evidence and ask to publish it.

21 THE COURT: Any objection?

22 MR. TROUT: No objection.

23 THE COURT: 22A is admitted. You may publish it.

24 MR. GIBBS: Thank you.

25 (Government Exhibit No. 22A

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1 was admitted into evidence.)

2 BY MR. GIBBS:

3 Q. Now, if we can blow up the top of that e-mail, the first
4 line.

5 Now, on the first line of that e-mail, Mr. Smith,
6 what did the defendant tell Ekim Alptekin was attached to the
7 e-mail?

8 A. An engagement letter between Inovo and FIG.

9 Q. And did the -- this e-mail, Government Exhibit 22A,
10 indicate up in the header that there was an attachment
11 included with it?

12 A. I don't see it in the header, but I believe --

13 Q. Okay. But he did indicate -- okay. Sorry.

14 Ms. Horsford is one step ahead of me as always.

15 Do you see that?

16 A. Yes, sir.

17 Q. All right. So that does indicate there was an attachment
18 included?

19 A. Yes, sir.

20 Q. All right. If we could go to that then. Let's go to
21 Government Exhibit 22B. You'll need to look at it first
22 because it is not in evidence yet.

23 Do you have it there before you?

24 A. I do, sir.

25 Q. And what is 22B?

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1 A. It's a document titled "Independent Advisory Services
2 Agreement."

3 MR. GIBBS: Your Honor, we'd ask to move that in and
4 publish it, please.

5 THE COURT: This is exhibit --

6 MR. GIBBS: 22B, as in "bravo."

7 THE COURT: Any objection?

8 MR. TROUT: No objection.

9 THE COURT: 22B is in.

10 (Government's Exhibit No. 22B
11 admitted into evidence.)

12 BY MR. GIBBS:

13 Q. Can we enlarge that first paragraph at the top?

14 So, Mr. Smith, in that first paragraph, who does it
15 list as the client?

16 A. The client is described as Inovo BV.

17 Q. And then, also in that paragraph, who does it list as the
18 advisor?

19 A. The advisor is ascribed as the Flynn Intel Group,
20 Incorporated.

21 Q. And then if we could go to the second page of the
22 independent services advisory agreement, there in the middle
23 we've got the compensation. Can we enlarge that, please?

24 Now, in this particular document, what is the
25 compensation listed for this project?

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1 A. It lists a fixed price of \$600,000 comprised of three
2 installments of \$200,000.

3 Q. And you've seen this document previously, correct?

4 A. Yes, sir.

5 Q. What, if any, reference was made in this document to that
6 20 percent professional advisory services?

7 A. None.

8 Q. What, if any, reference was made in here to the
9 20 percent for cost of goods sold, C-O-G-S?

10 A. None.

11 Q. Thank you.

12 Next, if we could pull up Government's Exhibit 67J,
13 which is in evidence.

14 If we could enlarge the top of that.

15 And in this Skype message between Ekim Alptekin and
16 the defendant, what did Ekim Alptekin say he was just about to
17 send?

18 A. That he would be sending the agreement.

19 Q. Where did he say it was coming from?

20 A. The PM's office.

21 Q. And at the top -- and you can see the date of this
22 particular Skype message?

23 A. Yes, sir.

24 Q. What is that date?

25 A. September 8, 2016.

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1 Q. Let's go to that next day, then. Let's pull up 67K,
2 which is already in evidence.

3 And if we can enlarge the top of that. And
4 Mr. Smith -- or -- yeah, Mr. Smith, what is Government
5 Exhibit 67K?

6 A. It looks to be another Skype message.

7 Q. And this is Ekim Alptekin sending a Skype message. And
8 at the top one it says, "Bijan, I urgently need a BIC/swift
9 code."

10 Can you explain what that is?

11 A. Codes identify a bank, BIC stands for bank identification
12 code.

13 MR. TROUT: Your Honor, I think it would be
14 appropriate to remind the jury of the limiting instruction.

15 THE COURT: Well, these are all in. They've already
16 been instructed. This is simply information available to
17 Mr. Rafiekian. Go ahead.

18 BY MR. GIBBS:

19 Q. All right. And, sir, did you complete your answer as far
20 as what a BIC/swift code -- what that is?

21 A. I believe so.

22 Q. Okay. And then the next line he asked about urgently
23 needing IBAN version of the bank account. Can you explain
24 what an IBAN is?

25 A. Yes, sir. IBAN stands for international bank account

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1 number, it's a standardized format used in international
2 transactions.

3 Q. And then under that he said, "And, finally, a direct link
4 to that account."

5 And then just below that he said, "I have the money
6 but need to deposit it ASAP before the banks close."

7 Do you see that?

8 A. Yes.

9 Q. Let's go to the next Skype message, which is 67L.

10 And if we could enlarge the green part. What is
11 Government Exhibit 67L?

12 A. Another Skype message.

13 Q. And what information is being transmitted in the green
14 blocks there?

15 A. The swift code, statement to U.S. does not use IBAN
16 numbers, and then the address for Bank of America.

17 Q. If we can go next to Government Exhibit 67M. If we could
18 enlarge that. Thank you.

19 What is Government Exhibit 67M?

20 A. Another Skype message.

21 Q. Okay. And in this Skype message, Alptekin said, "Since I
22 had to wire from my personal account, I suggest we alter the
23 agreement to an agreement between FIG and my person while
24 Inovo invoices for services provided to FIG. What do you
25 think?"

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1 Now, in that message he talked about wiring from my
2 personal account. As part of your activities in this
3 investigation, did you review banking records related to an
4 international wire transfer that was also dated on
5 September 9th?

6 A. I believe so.

7 Q. If we could -- I'd like you to take a look at Government
8 Exhibit No. 25S. It's not in evidence yet, but if you could
9 identify that.

10 A. Yes, sir. It is a FIG statement from Bank of America for
11 the Flynn Intel Group, Incorporated, for the period ending
12 September 30th, 2016.

13 MR. GIBBS: Your Honor, at this time, we'd ask to
14 move in Government Exhibit 25A.

15 THE COURT: Any objection?

16 MR. TROUT: No, Your Honor.

17 THE COURT: Exhibit 25A is admitted.

18 (Government's Exhibit No. 25A
19 admitted into evidence.)

20 MR. GIBBS: And if we could publish the third
21 page -- well, first of all, yeah, just publish the first page.
22 I'm sorry.

23 THE COURT: All right.

24 BY MR. GIBBS:

25 Q. Okay. And that's the first page, 25A; do you see that?

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1 A. Yes, sir.

2 Q. Let's go to the third page. And if we could, I would
3 like to enlarge the second transaction from the top.

4 And Mr. Smith, can you explain what type of
5 transaction we're looking at here?

6 A. This appears to be an international wire that's inbound
7 to the account. It was credited to the account on September
8 9th, 2016 in the amount of \$200,000.

9 Q. And in the Skype message we just looked at a moment ago
10 from September 9th, Alptekin said, "I had to wire from my
11 personal account." What, if anything, did you see in this
12 particular transaction that reflected a particular name was
13 listed?

14 A. On the second line after ORIG, which typically stands for
15 "originator," is listed Kamil Ekim Alptekin.

16 Q. And then does this record indicate anywhere, for this
17 particular \$200,000 wire transfer, what country this wire was
18 coming from?

19 A. It does.

20 Q. And what country was it coming from?

21 A. Turkey.

22 Q. And how can you tell from looking at this record that
23 it's coming from Turkey?

24 A. The information after the word "ID," following Alptekin,
25 as the beginning of an IBAN number. The first two digits of

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1 an IBAN identify a country by the standard two digit country
2 reference. TR stands for Turkey.

3 Q. And you mentioned that this wire transfer that we're
4 looking at here came from Turkey.

5 MR. GIBBS: We can take that off screen now.

6 BY MR. GIBBS:

7 Q. As part of your investigation, were you able to obtain
8 any financial records from Turkey that provided any further
9 detail about this particular international wire?

10 A. No, sir.

11 Q. And is there any reason you were not able to obtain those
12 records?

13 A. Because we were unable to -- you are unable to serve a
14 subpoena to a foreign bank.

15 Q. How about a MLAT, or a Mutual Legal Assistance Treaty?
16 Would that be an avenue to getting more detail about this
17 particular international wire?

18 A. It would be.

19 Q. And would there be any concerns with trying to request an
20 MLAT for this type of international wire?

21 A. Well, the MLAT, from my understanding, is provided to the
22 government, not the institution from which you're seeking
23 records. And it often includes a summary of the criminal
24 matter under investigation.

25 Q. It is describing what was being investigated?

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1 A. Yes, sir.

2 Q. And as far as you're aware, no MLAT was submitted to
3 request further details about that particular wire; is that
4 correct?

5 A. Correct.

6 Q. Now, in the prior Skype message we looked at,
7 Mr. Alptekin also talked about altering the agreement. Do you
8 recall that?

9 A. Yes, sir.

10 MR. GIBBS: If we could pull up Government Exhibit
11 25B, which is in evidence. I think we can just enlarge the
12 top and see everything.

13 BY MR. GIBBS:

14 Q. Sir, what is Government Exhibit 25B?

15 A. It's an e-mail with the subject of "wire to Ekim" from
16 Bijan Kian to Michael Flynn, dated September 12, 2016.

17 Q. Sir, that's a relatively short message. Could you just
18 read that into the record, please?

19 A. Yes, sir.

20 "Michael, we need to wire 40K to Mr. Ekim Alptekin.
21 He is our outside advisor on the Confidence project. I will
22 draft an advisory agreement to be executed with him to
23 document this relationship. How is your schedule today?
24 Thanks, BK."

25 Q. All right. Thank you.

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1 MR. GIBBS: And next, I'd like to have Government
2 Exhibit 25C, which is also in evidence, pulled up. And can we
3 enlarge that?

4 BY MR. GIBBS:

5 Q. Now, can you, just for the record, state what Government
6 Exhibit 25C is?

7 A. Yes, sir. It's an e-mail from Bijan Rafiekian to Michael
8 Flynn with a carbon to Michael Flynn, sent September 12, 2016.
9 The subject is "advisory agreement" -- with parentheses --
10 (general scope) for Ekim Alptekin."

11 Q. Okay. And in this e-mail, the defendant talked about an
12 agreement being composed in a way that is not specific so that
13 it could be operationalized with task orders. And then it
14 said, "We need this to create an audit trail on properly
15 documenting the relationship." Is that correct?

16 A. Yes, sir.

17 Q. And what is listed as an attachment to that particular
18 e-mail?

19 A. The attachment is described as Ekim's -- "Ekim advisory
20 agreement BK 9122016."

21 MR. GIBBS: And if we can go to that, and that is in
22 evidence. It's Government Exhibit 25D.

23 Can we pull up that -- enlarge that first paragraph,
24 please?

25 MR. GIBBS:

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1 Q. All right. What is this document, 25D, first of all?

2 A. It's an Independent Advisory Services Agreement.

3 Q. And who is listed in the first line of this agreement?

4 A. Mr. Ekim Alptekin.

5 Q. How did that name compare to the name on the \$200,000
6 wire we saw from Bank of America for the September statement?

7 A. I believe it's the same last two words.

8 Q. And in the -- I think it's the third line of that
9 paragraph, what is Ekim Alptekin referring to in this
10 agreement?

11 A. An advisor.

12 Q. And then a couple of lines down, how is FIG referred to
13 in this agreement?

14 A. They're referred to as the client.

15 Q. And then at the bottom of 22D --

16 MR. GIBBS: If we pull up the compensation.

17 BY MR. GIBBS:

18 Q. And how much compensation is listed in this agreement,
19 Mr. Smith, for Mr. Alptekin?

20 A. The compensation is described as a mobilization fee of
21 \$40,000 upon execution, with subsequent -- subsequent payments
22 based on task orders issued by the client.

23 Q. Okay. \$40,000 as a mobilization fee?

24 A. Yes, sir.

25 MR. GIBBS: All right. If we can go back to

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1 Government Exhibit 25A, which is the Bank of America statement
2 again and go back to that third page.

3 BY MR. GIBBS:

4 Q. In looking at that third page, Mr. Smith, were there any
5 \$40,000 transactions there?

6 A. There were.

7 Q. And where was that? Maybe you can help me.

8 A. It's the --

9 Q. There you go. All right. So on your screen, you have --
10 well, what is the portion that's enlarged there?

11 A. This is the details regarding a September 13, 2016
12 outbound international wire transfer in the amount of \$40,000.

13 Q. And you said it's an outbound wire transfer. Who is it
14 sent to?

15 A. It was sent to Inovo BV.

16 Q. And which country was it sent to?

17 A. An account in the Netherlands.

18 Q. And is the \$40,000 transfer described in any way in this
19 Bank of America record?

20 A. At the end of the description -- at the end of the text
21 is a reference to consultancy fee.

22 Q. Okay. Not mobilization fee?

23 A. Correct. Consultancy fee.

24 Q. And Mr. Smith, you had an opportunity to look at this
25 September Bank of America statement previously?

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1 A. Yes, sir.

2 Q. Other than the \$200,000 inbound wire on September 9th and
3 this outbound wire on the 13th, was there -- were there any
4 other international wire activity for the FIG account for
5 September 2016?

6 A. No, sir.

7 THE COURT: Anything else?

8 Q. And Mr. Smith, did you also review banking records from
9 the Netherlands that related to this transaction?

10 A. I did.

11 Q. And were those records obtained by an MLAT?

12 A. Yes, sir.

13 Q. And if we could -- actually this is not in evidence yet,
14 so if you could take a look --

15 MR. GIBBS: I think it's going to be a different
16 binder. 150A. Thank you, sir.

17 BY MR. GIBBS:

18 Q. And Mr. Smith, what is Government's Exhibit 150A?

19 A. 150A appears to be a response received from the
20 Netherlands documenting their actions based on the receipt of
21 an MLAT.

22 Q. And specifically the MLAT was asking for -- requested and
23 obtained documents from what entity?

24 A. So one of the steps that the investigator took was an
25 investigation of a bank account held at ABN AMRO.

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1 Q. And that's the name of the bank, ABN AMRO?

2 A. Yes, sir.

3 Q. And whose account statement at ABN AMRO did this MLAT
4 obtain?

5 A. It stated that the account number is in the name of
6 Inovo BV.

7 MR. GIBBS: And, Your Honor, at this time, we'd move
8 Government Exhibit 150A into evidence?

9 THE COURT: Any objection?

10 MR. TROUT: No, sir.

11 THE COURT: 150A is admitted.

12 (Government's Exhibit No. 150A
13 admitted into evidence.)

14 BY MR. GIBBS:

15 Q. So, Mr. Smith, we have before us on the screen, this is
16 the first page of Government Exhibit 150A, correct?

17 A. Yes, sir.

18 Q. And are these the Dutch bank documents you just testified
19 about?

20 A. This is the cover letter, yes.

21 Q. Oh, the cover letter. That's correct.

22 Now, can we go -- it's the ninth page, I think, but
23 it's Bates No. 189. Thank you.

24 Mr. Smith, what does it reflect in these Dutch
25 banking records for the Inovo account regarding any large

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1 incoming wires for the month of September into that bank
2 account?

3 A. So on the 14th of September, 2016, this statement
4 documents a deposit of a wire received from the Flynn Intel
5 Group, Incorporated.

6 Q. And what was the -- did you say what the amount was, the
7 amount of the wire?

8 A. \$40,000.

9 Q. Thank you. Now, if we can go back one page, I think it's
10 Bates No. 188. I think it's the two rows at the top.

11 All right. Mr. Smith, this is also part of the
12 Inovo records; is that correct?

13 A. Yes, sir.

14 Q. And at the top there, what was listed for Inovo BV's
15 previous balance for the month of September?

16 A. \$3,000.

17 Q. And what is listed for the new balance?

18 A. \$27,897.72.

19 Q. And how about the total withdrawals?

20 A. \$30,102.28.

21 Q. And, finally, total deposits?

22 A. \$55,000.

23 Q. And as part of your review of documents from Inovo -- you
24 can take that down, thank you -- did you also review records
25 that related to -- there were corporate records related to

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1 Inovo BV?

2 A. Yes, sir.

3 Q. All right. You'll have to look in your binder, it's
4 Government Exhibit 150B. If you would, take a look at that.

5 A. I don't see a 150B.

6 Q. We can probably put it on your screen, I think.

7 THE COURT: Do we have a 150B?

8 MR. GIBBS: Your Honor, we have a electronic version
9 of 150B. We don't have a paper copy -- if there's no
10 objection from --

11 THE COURT: Any objection?

12 MR. TROUT: No objection.

13 THE COURT: All right. 150B will be admitted.

14 (Government's Exhibit No. 150B
15 admitted into evidence.)

16 MR. GIBBS: All right. Thank you.

17 BY MR. GIBBS:

18 Q. So if we can publish 150B.

19 And, Mr. Smith, what is Government Exhibit 150B?

20 A. It's records from the Chamber of Commerce provided in
21 response to the MLAT.

22 Q. And if we could blow up the -- maybe the top third of
23 that.

24 Now, what is the legal entity listed in the first
25 big row at the top of this particular document?

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1 A. So the document, it's Inovo BV.

2 Q. And then below that, how many -- under "persons
3 employed," what is listed there?

4 A. It lists one.

5 Q. And then can we go down a little bit? Just a little
6 more. Great.

7 And also listed there is a listing for sole
8 shareholder.

9 Do you see that?

10 A. Yes, sir.

11 Q. And who is listed on this particular document as the sole
12 shareholder?

13 A. Ekim Holding BV.

14 Q. And if we can go to the second page of 150B. Blow that
15 whole thing up.

16 And who is listed as the executive director for
17 Inovo BV?

18 A. Kamil Ekim Alptekin.

19 Q. Now, Mr. Smith, you testified a moment ago this document
20 identified the sole shareholder for Inovo BV as Ekim Holding
21 BV; is that correct?

22 A. Yes, sir.

23 Q. And did the Dutch records that were obtained also contain
24 an extract or business record for Ekim Holdings BV?

25 A. They did.

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1 Q. So if we can go to the third page of that, and if we can
2 do the same thing, if we can pull up the top third.

3 And what is the legal entity for this extract listed
4 up there at the top?

5 A. Ekim Holding BV.

6 Q. And then if we can go down to the bottom.

7 What number is listed next to persons employed?

8 A. One.

9 Q. And who is listed as both sole shareholder and executive
10 director?

11 A. Kamil Ekim Alptekin.

12 Q. Thank you. Now, Mr. Smith, did you also review financial
13 records in this case from October 2016?

14 A. Yes, sir.

15 Q. All right. Do you have the binder in front of you? This
16 will be Government's Exhibit 34.

17 And Mr. Smith, what is Government Exhibit 34?

18 A. It's a bank statement for a Bank of America account held
19 in the name of Flynn Intel Group for the period ending
20 October 31, 2016.

21 MR. GIBBS: And, Your Honor, we'd ask to move in
22 Government Exhibit 34.

23 THE COURT: All right. Any objection?

24 MR. TROUT: No.

25 THE COURT: All right. 34 is admitted.

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1 (Government's Exhibit No. 34
2 admitted into evidence.)

3 BY MR. GIBBS:

4 Q. And, again, if we can go to the third page of this bank
5 statement. If we can blow up the transaction right there at
6 the top.

7 Mr. Smith, can you explain what this transaction is?

8 A. This is an inbound international wire transaction
9 credited on October 11, 2016, in the amount of \$185,000.

10 Q. And you said it's an international inbound wire.

11 Can you tell what country this wire was coming from?

12 A. Turkey.

13 Q. And what was the name listed in this incoming wire?

14 A. Kamil Ekim Alptekin.

15 Q. All right. Now, if we can go to Government Exhibit 35B,
16 which is in evidence. If we can pull that up.

17 If we can enlarge that.

18 What is Government Exhibit 35B, Mr. Smith?

19 A. It is an invoice from Inovo to the Flynn Intel Group.

20 Q. And what's the date of the invoice?

21 A. It's dated October 14, 2016.

22 Q. And what is the amount of the invoice?

23 A. \$40,000.

24 Q. And what's the description of this particular invoice?

25 A. Consultancy fee, Confidence project.

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1 Q. Now, in looking at this document, Mr. Smith, was there an
2 IBAN number listed on the invoice?

3 A. There is.

4 Q. And where is the IBAN number listed?

5 A. Second line from the bottom.

6 Q. And it is the one that starts with IBAN?

7 A. Yes, sir. The number starts with that.

8 Q. So let's go back to Government Exhibit 34, to that third
9 page again.

10 If we could enlarge that \$40,000 transaction again.

11 How did the IBAN number on the invoice we just saw,
12 which is Government Exhibit 35B, how did that compare to the
13 IBAN number on the Bank of America statement from October
14 2016?

15 A. Closely. The number on the Bank of America statement is
16 slightly truncated.

17 Q. Okay. So it's incomplete?

18 A. Correct.

19 Q. But otherwise it appears to be the same IBAN number?

20 A. Yes, sir.

21 THE COURT: Thank you, Mr. Gibbs.

22 We're going to adjourn for today. We will continue
23 tomorrow morning and begin at 9:30. Please make whatever
24 arrangements you need to in order to be in the jury room by
25 around 9:15, and -- so we can begin promptly at 9:30.

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1 Again, I instruct you not to discuss this case among
2 yourselves or with anyone outside of the courtroom. And,
3 again, please do not engage in any research or anything else
4 that might have pricked your interest here today.

5 And with that, you're excused until tomorrow
6 morning.

7 (Jury dismissed.)

8 THE COURT: All right. Mr. Smith, you're excused
9 until tomorrow morning at 9:30. Do not discuss your testimony
10 during the evening recess.

11 (Witness excused.)

12 THE COURT: Anything else before we adjourn?

13 MR. GILLIS: I had one matter, Your Honor.

14 THE COURT: Yes, please be seated.

15 MR. GILLIS: During the cross-examination of
16 Mr. Kelner, Mr. MacDougall asked a quick question about how
17 many FARA indictments there had been. And I asked that the
18 question and the answer be stricken. Those are -- that is
19 irrelevant, Your Honor. How many prosecutions there may have
20 been in the FARA case is no more relevant than how many
21 robbery indictments there have been in a robbery. It does not
22 tend to suggest guilt or innocence. There is, in this case,
23 no suggestion whatsoever of selective prosecution, which is
24 the only circumstances in which that sort of question and
25 answer would be appropriate. It 's just that the defendant

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1 wants the jury to draw some kind of conclusion that this case
2 is not -- is --

3 THE COURT: I thought the question was related to
4 indictments arising out of his FARA filings.

5 MR. GILLIS: No, Your Honor. It was entirely how
6 many indictments under FARA have there been. That was the
7 question, and it's irrelevant, Your Honor. We should -- if
8 that comes in, we should be able to say there have been plenty
9 of 951 charges because there are very serious offenses, and we
10 should be allowed to say that there are thousands of 375 --
11 371 -- pardon me -- charges brought every day in this country.
12 So they're equally irrelevant. That question and answer
13 should be stricken, Your Honor.

14 THE COURT: All right. MacDougall, do you want to
15 respond?

16 MR. MACDOUGALL: I don't have the transcript. The
17 question was very clear. I think the Court heard it clearly.
18 This was directed to a man who was the preeminent expert in
19 FARA, and I asked him how many registrations he had, and how
20 many inquiries he had, and how many had been indicted. And
21 that was the question and I think the transcript will reflect
22 that.

23 THE COURT: So it pertained to his filing?

24 MR. MACDOUGALL: Absolutely. Yes, Your Honor.

25 THE COURT: All right. Yes.

1 MR. GILLIS: Your Honor, I would like the
2 opportunity, if you would, for us to review the record.

3 THE COURT: That would be fine. That would be fine.
4 I'll reflect on this and rule at an appropriate time.

5 Yes?

6 MR. MACDOUGALL: Just one other matter, Your Honor.
7 Very quickly, that I put everyone through the tedium of
8 listening to 102, A through M. We have, under subpoena,
9 several people at Covington, Katherine Langdon (ph) is not one
10 of them. That document, we didn't think it would be
11 controversial, and the sole purpose of it is to make clear
12 that they had those documents in January, which is what I
13 think her e-mail says, the Government objected to that as
14 hearsay.

15 So what we'd ask is if we can't reach a resolution,
16 for the Court's permission to subpoena Ms. Langdon in the
17 defense case for the limited purpose of coming in and
18 authenticating that e-mail.

19 THE COURT: Which e-mails are we talking about?

20 MR. MACDOUGALL: This was the one --

21 THE COURT: The one A through M that you went
22 through?

23 MR. MACDOUGALL: Yes, Your Honor.

24 THE COURT: I thought he testified that he didn't
25 dispute that Covington had had those, those e-mails.

1 MR. MACDOUGALL: If that's his testimony, I -- he
2 kind of was, you know, back and forth depending upon the
3 document. And, again, the sole issue that we're trying to
4 reach is that they had them in January, and I think that's
5 what the e-mail clearly says. And I would hate to
6 inconvenience Ms. Langdon, but if we need to, we would like to
7 have the Court's permission to do that.

8 MR. TROUT: Your Honor, we have no objection to the
9 exhibit coming in without a sponsor, so it's not necessary to
10 call Mrs. -- Ms. Langdon.

11 MR. MACDOUGALL: Langdon.

12 THE COURT: All right.

13 MR. TROUT: But apart from that, we reserve any
14 other --

15 MR. MACDOUGALL: Thank you, Your Honor.

16 THE COURT: All right. It sounds like that may cure
17 it.

18 All right. How much longer do you have with
19 Mr. Grant?

20 MR. GIBBS: Five minutes, Judge.

21 THE COURT: Okay. And who is in the queue for
22 tomorrow?

23 MR. GIBBS: We have McCauley. Boston. Well, I
24 don't want to try to do it from memory. I'm pretty sure those
25 are the first two.

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1 Smith is on now. McCauley. Well, it's going to be
2 McCauley, Boston, and Elliot in some order. I think that will
3 take us through the morning for sure.

4 THE COURT: All right. All right.

5 MR. GIBBS: We'll talk.

6 THE COURT: All right. And then we'll meet at
7 9 o'clock tomorrow.

8
9 **(Proceedings adjourned at 6:06 p.m.)**

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EASTERN DISTRICT OF VIRGINIA

CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Jury trial in the case of the **UNITED STATES OF AMERICA versus BIJAN RAFIEKIAN**, Criminal Action No. 1:18-CR-457, in said court on the 16th day of July, 2019.

I further certify that the foregoing 157 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this July 17, 2019.



Tonia M. Harris, RPR
Official Court Reporter